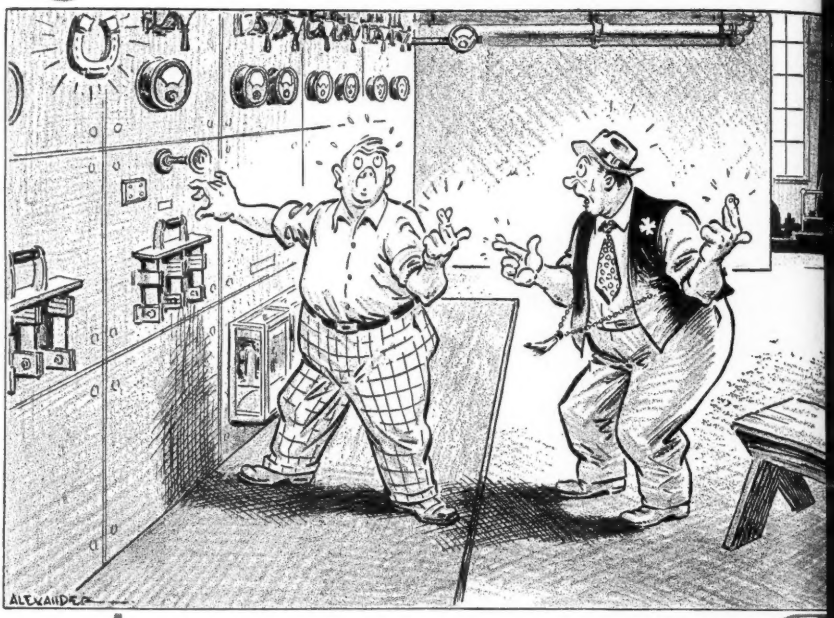
Public Utilities

FORTNIGHTLY

July 22, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

"CAREFUL, THERE!"



"I'M PRAYIN'! LET'ER GO, MALCOLM!"

Fortunately, in many industrial and public utility plants, safe, modern, I-T-E switchboards have replaced old, hazardous types. For the I-T-E boards, Malcolm needs no aid from good-luck charms.

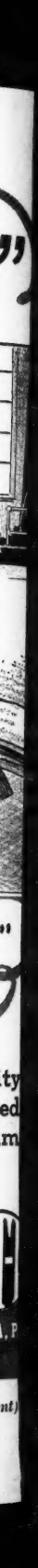
I-T-E AIR SWITCHGEAR

IMMERSED IN AIR — ENCASED IN STEEL

ARMY E NAVY

I-T

CIRCUIT BREAKER CO., PHILADELPHIA, P



ed by A. . Test- Laboratory. ¼" up.

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RIGID economy on every type of gas fuel is a necessary part of the war program. Every public service corporation can help to promote maximum efficiency in the use of gas by advising the installation of reliable pressure regulators. You can safely recommend to your customers the use of Barber Regulators, which have long been recognized as mechanically perfect, highly dependable in action, and certain to give finer performance and greater fuel economy from any gas appliance.

The facilities of our company are now largely engaged upon essential war equipment. For those restricted purposes for which the sale of our regular products is permitted, we are continuing to supply them. When normal conditions again prevail, Barber will be well equipped to render its customary service to the trade on burners and regulators.

iptive folders sup- free for your trade. for new Catalog Prices on Barber ersion and Appliance ers, and Regulators.

BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland, Ohio

BARBER GAS PRESSURE REGULATORS

er Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

Public Utilities Fortnightly

VOLUME XXXII *July 22, 1943* NUMBER 2

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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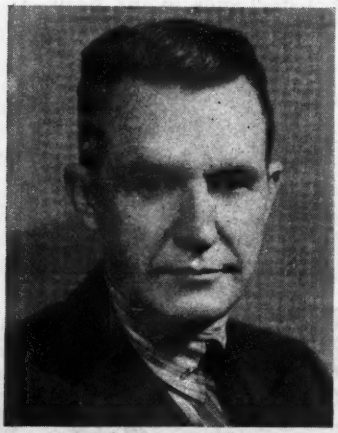
Pages with the Editors

THE other day we were standing on the street corner in Washington, D. C., watching the street cars trying to absorb the swelling horde of government employees released from the various Federal bureaus. Notwithstanding a staggered-hour system which opens some offices as early as 8 o'clock and others as late as 9:30, the Washington rush hour, thanks to gasoline rationing and automobile restrictions, has become a monstrous thing to behold. Wave after wave of government workers, as well as private business employees, are released within a narrow area of a couple of square miles centered in downtown Washington.

As a result Washington street cars begin to take on the appearance of those news reels we used to see from Moscow wherein patrons are not only crammed up inside of the car but sitting on the roof and generally hanging on the ragged end of nothing. It's the same story in Baltimore, Norfolk, and other war-boom cities which do not have the advantage of supplementary transit facilities such as subways or elevated systems.

IT so happened that at this particular time we were talking to a friend in the street railway business. We could not resist the temptation to josh him about the immense profits the street railway companies were making out of this windfall traffic born of the emergency. Our friend snorted and said "Indian summer, that's all." He went on to express the thought that when they start selling automobiles again and tires for them, the transit companies will find themselves loaded up with surplus equipment—much of it all worn out and generally in a bad way.



RAYMOND S. TOMPKINS

The transit rider is going to demand some postwar consideration.

(SEE PAGE 69)

© Harris & Ewing

CLYDE T. ELLIS

The NRECA is truly a grass-roots organization.

(SEE PAGE 76)

Is this actually going to be the case? It was a thought-provoking commentary, so we took the problem to an experienced associate of the transit industry. We found out that he had some pretty definite ideas on the subject. The result is the opening article in this issue, "The Human Sardine after the War," by RAYMOND S. TOMPKINS. MR. TOMPKINS has for a number of years been the director of information and service of the Baltimore Transit Company. He is also an experienced writer whose articles have appeared in *American Mercury, Nation's Business, Scribner's, Electrical World,* and *Transit Journal,* as well as previous issues of PUBLIC UTILITIES FORTNIGHTLY. He was a war correspondent in 1918 and European cor-

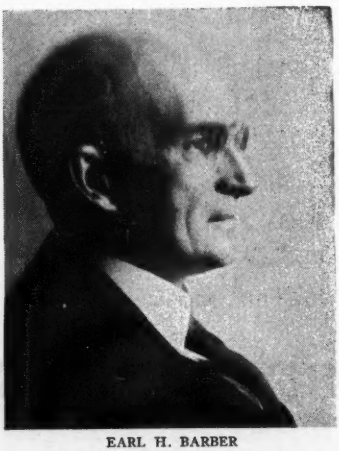
respondent for the Baltimore *Sun* in 1923 and 1924. He is also a graduate lawyer from Georgetown University in Washington, D. C. He has lectured on journalism at Johns Hopkins University and is the author of two books on World War I.

THE article published in the July 8th issue of the FORTNIGHTLY, entitled "What Is the True Origin of NRECA?" by Judson King, seems to have stirred up a considerable amount of attention. For one thing, we were interested to note that not only was the article reprinted in the *Congressional Record* of July 6th as an extension of remarks of Senator Shipstead of Minnesota, but the Senator also paid us the compliment of having the *Congressional Record* reproduce excerpts from this very department, "Pages with the Editors."

As promised in the July 8th issue, we have obtained an article on the other side of the question raised by Mr. King. We present in this issue a reply from the man perhaps best qualified to answer Mr. King's charges. He is CLYDE T. ELLIS, executive manager of the NRECA, currently in charge of that organization's headquarters in Washington. MR. ELLIS has been interested in the rural electric movement almost from the beginning of his public life.

HE introduced the first state rural electric coöperative law as an Arkansas state senator in 1937. In 1940 and on two occasions since then MR. ELLIS introduced bills in the House of Representatives designed to set up an Arkansas Valley Authority for public power development in that area along lines somewhat similar to the TVA. In short, MR. ELLIS has been a consistent and aggressive advocate of public power and a champion of the rural electric coöperative movement.

HE was born in Bentonville, Arkansas, in 1908, graduated from Arkansas University College of Arts and School of Law. After some experience in teaching and law practice, he served in both branches of the Arkansas legislature and was elected as a member of the Seventy-sixth Congress of the United States from the third Arkansas district. He voluntarily retired from his House seat after serving two terms when he entered the Arkansas senatorial primary in 1942. He took his present post in January, 1943.



EARL H. BARBER

He recalls the halcyon days of the old Massachusetts Board of Gas and Electric Light Commissioners.

(SEE PAGE 82)

"MASSACHUSETTS; there she stands!" is a slogan which can certainly be applied to the regulatory commission of the old Bay state. Not only was the Massachusetts commission under its various titles a pioneer in the field of regulation but it also developed case characteristics which stand alone almost to this day. We say "almost" because the doctrine of prudent investment for which the Massachusetts board at one time fought virtually alone and unaided has lately come into such widespread popularity and acceptance as to make the Massachusetts commission certainly no longer peculiar in its adherence to that doctrine.

IN this issue, beginning page 82, EARL H. BARBER, who prior to his retirement to private engineering practice in Reading, Massachusetts, in 1932, was for many years associated with the staff of the Massachusetts board, traces what he regards as the golden age of dynamic development within the Bay state commission. MR. BARBER is frankly reminiscing and assures us that his article was penned with all due respect for the work of the present Massachusetts Department of Public Utilities with whose work, of course, he has no such intimate knowledge. A graduate of the Massachusetts Institute of Technology, MR. BARBER saw engineering service in various places—U. S. Geological Survey in Colorado, Ellis Island immigration station (Treasury Department), special assistant to the attorney general of Massachusetts—before he became engineer to the board of gas and electric light commissioners of Massachusetts in 1916. He remained as engineer to the department of public utilities, which in 1919 took over the work of the old board and in 1926 became an adviser to the department until 1931. He has since assisted the District of Columbia Public Utilities Commission and the Rural Electrification Administration.

THE next number of this magazine will be out August 5th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 48 PUR(NS)

Vulcan provides clean heat transfer surfaces to the Combustion four-drum, bent-tube, 400,000 lb. per hr., pulverized coal-fired boiler which serves this new 40,000 kilowatt, 900 lb. per sq. in. Southern plant.

VULCAN SOOT BLOWERS

Chickasaw becomes another in the long list of plants depending on VULCAN Soot Blowers to assure highest heat transfer, real steam economy and freedom from frequent servicing.

The advanced design, HyVuloy and Vulite intimate contact bearings, HyVuloy elements and VULCAN'S Model LG-1 are guarantees of efficient, trouble-free operation in ANY plant.

Remember that whatever the characteristics of your boiler and setting, fuel, or load, Vulcan engineers will be glad to solve any soot blower installation and operating problem involved.

VULCAN SOOT BLOWER CORP., DUBOIS, PA.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

FRANK SANFORD
Cincinnati Gas & Electric Company.

"Plans are as essential for a period of transition as they are for the military campaigns."

LOUIS S. HEADLEY
Vice president, First Trust Company of the St. Paul Bank.

"Inflation masquerades under the guise of prosperity and is at the banquet table before we know it."

HERBERT HOOVER
Former President of the United States.

"To freeze men to their jobs is a violation of the constitutional freedom of men from involuntary labor."

THOMAS E. DEWEY
Governor of New York.

"The exercise of powers which infringe upon liberty can cause revulsions against all delegated power. We must clear our thinking for the days ahead so that there shall be no revulsion against the proper exercise of full power by the national government."

EDWARD MARTIN
Governor of Pennsylvania.

"Pressure groups are forcing inflation on the country today. If these groups are not checked, if inflation is not stopped, our system of living will be destroyed. They can be checked only by political activity. It takes courage to enter politics, but it is patriotic and a requirement of good citizenship to do so."

DAVID HINSHAW
Vice president, Institute of Public Relations.

"You can make the American way of life the world way of life and you can do it without the aid of soldiers or subsidies, trade concessions, or international treaties. Your [journalistic] profession can inspire other men to work and fight to gain and hold our way of life if you will but tell the gorgeous, growing, vital story of the way a free people live and let live."

WARREN R. AUSTIN
U. S. Senator from Vermont.

"We can't stop to debate legal questions when we are in grave danger from surrounding enemies who are mobilizing every resource at their command against us. There are laws that supersede constitutional laws. If it is necessary to discriminate between classes of workers to save this country, we will do it. Any debate on the literal constitutionality of such a course is purely academic now. The supreme law of the time is the necessity for waging total war."

EMIL SCHRAM
President, New York Stock Exchange.

"I believe that in this country our political leaders have too long discounted and discredited the profit incentive as an instrument of human progress. In the postwar world our government will have to nourish, rather than merely tolerate, the profit motive. And I have no doubt that it will do so."

JOSEPH W. MARTIN, JR.
U. S. Representative from Massachusetts.

"The people want less unnecessary meddling by the bureaucrats; they want less unnecessary inquisitions. It has come to be that we can well say: 'Count that day lost whose low descending' does not bring some new questionnaire or some needless regulation which results in waste of time, money, and man power, and accomplishes nothing except to give work to the vast army of bureaucrats in Washington. The war effort has been seriously retarded by the meddlers seeking an excuse to keep on the Federal payroll."

HARVEY C. FRUEHAUF
President, Fruehauf Trailer Company.

"Too often in the past both state and national governments have taken a restrictive rather than a constructive attitude toward the growth of highway transportation. It has been aptly pointed out that for years we have been engaged in restrictive regulation and that few, if any, of the restrictions have been repealed even though the causes for such restrictions have long ceased to exist. It is startling but true that restrictions placed on vehicles during the day of the macadam road and solid tire still hamper modern vehicles with balloon tires running on concrete superhighways."

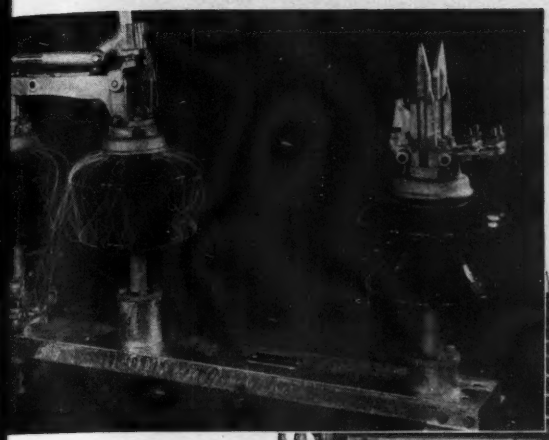
ADOLF A. BERLE, JR.
Assistant Secretary of State.

"Because the problems of today are vast in scope, intense in human significance, and deep in complication, attempts will be made to convert us to the idea that unlimited authoritarian power could provide a solution. There are some who, in confusion or fear, will be attracted. That bridge was crossed in the days of the Napoleonic wars when Thomas Jefferson and the liberals, overwhelmingly sympathetic with the objectives of the French Revolution, politely but firmly declined to allow their thinking to be dominated by European currents. True American liberals do not need repatriation."

HERBERT R. O'CONOR
Governor of Maryland.

"I believe that the most vital domestic problem before the American people is that of the maintenance of our dual form of government. Under it, the states and the Federal government, both as sovereign entities, must be preserved in the fullest use of their powers, in exact accordance with the pattern of the country's founders. Only by the fullest discharge of the state's responsibilities will there be preserved the beneficial rights and freedoms which are at the core of American citizenship. To have the states stripped of their powers through Federal usurpation would be the greatest calamity in American history."

R&IE *The Switching Equipment* SPECIALIST



The Load Tests made during development, during production, and after years of service, demonstrate that Hi-Pressure Contact Switches carry their rated load year in and year out under all service conditions

As you seek Quality and Service - remember that R&IE has been a specialist in the problems of Indoor and Outdoor Switching Equipment for over thirty years.

Shown here is a normal production line of Hi-Pressure, Self-Cleaning-Contact Switches, possibly on the way to some War Production center.

The flashover test, shown at the top, is one of the several methods used to check design and performance.

This same production may be serving you some day when peace-time reconstruction calls for a broader application of reliable switching equipment.

R&IE will continue to specialize in the making of this equipment long after the present War-time emergency.

RAILWAY *and* INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating* 100% *with the War Effort

POWER — MORE and

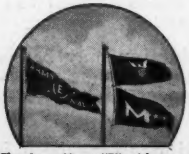
Electric power output has reached an all-time high —and is still moving upward. The increasing demands of industry are being met, as are also those for electricity for domestic use.

The credit for this almost miraculous situation belongs principally to the public utility companies, which in peace time correctly interpreted trends and prepared to meet what were certain to be unprecedented demands on their capacity.

In meeting these demands today, many of the central-stations have the help of newer types of Babcock & Wilcox Boilers, the High-Head, Radiant, Open-Pass, and Integral-Furnace. Each of these types definitely satisfies the requirements of some combination of operating conditions, as is evidenced by the fact that B&W boilers of these types alone in service have a nominal total steam-generating capacity of 42,000,000 lb. per hour.

While we take understandable pride in the performance of our boilers, we feel that to the designers, engineers and operators of the public utilities belongs the real credit for meeting the demands of the industrial and domestic power consumers in this emergency.

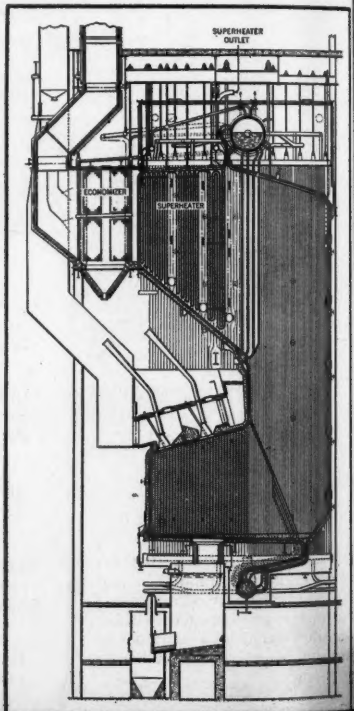
THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET, NEW YORK, N. Y.



The Army-Navy "E" with two stars and Maritime Commission Award flags are floated proudly at the Barberton Works.

G-250T

Typical B&W Radiant Boiler in Central-Station Service. Capacity 550,000 lb. steam per hr.



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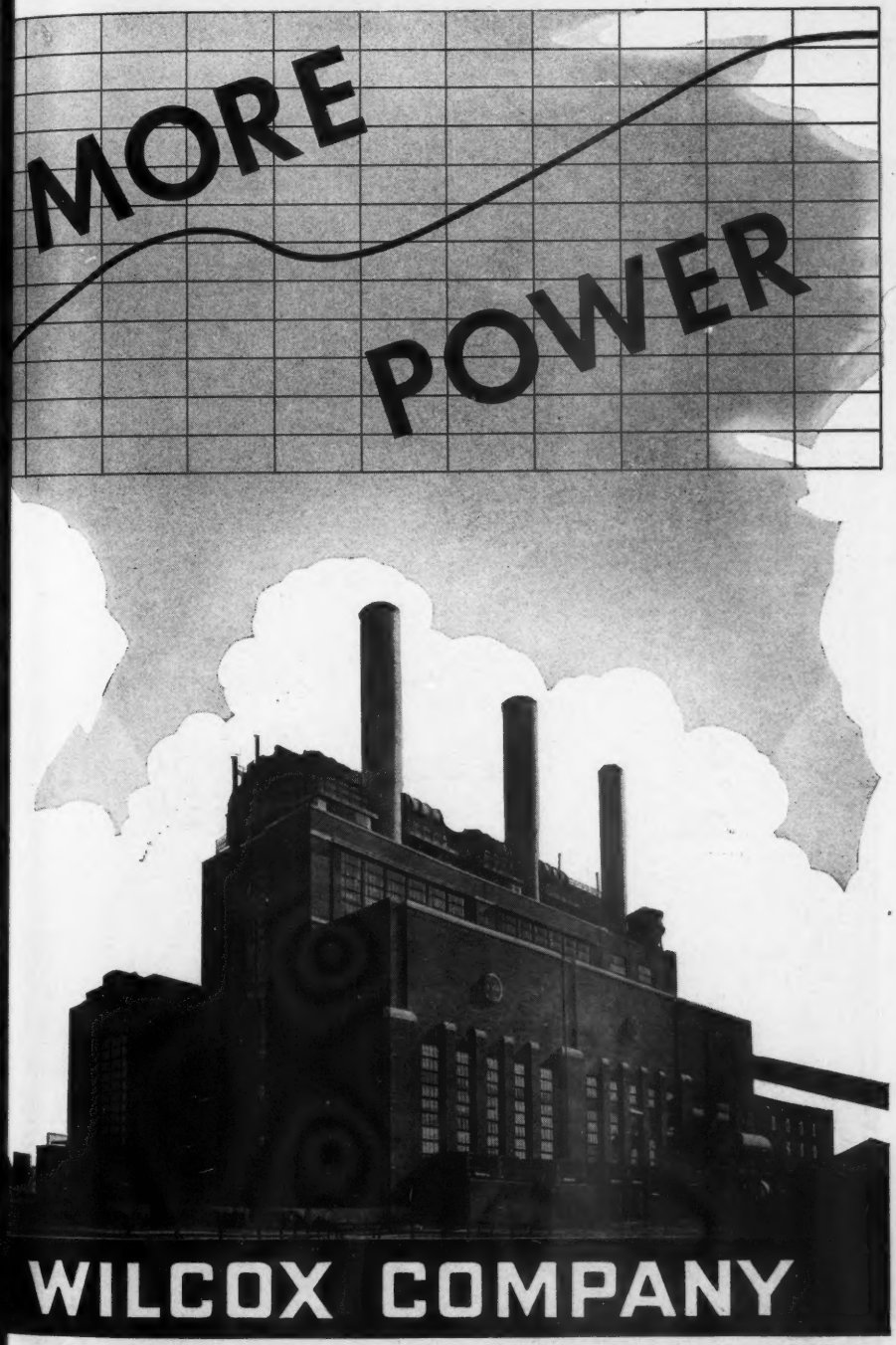

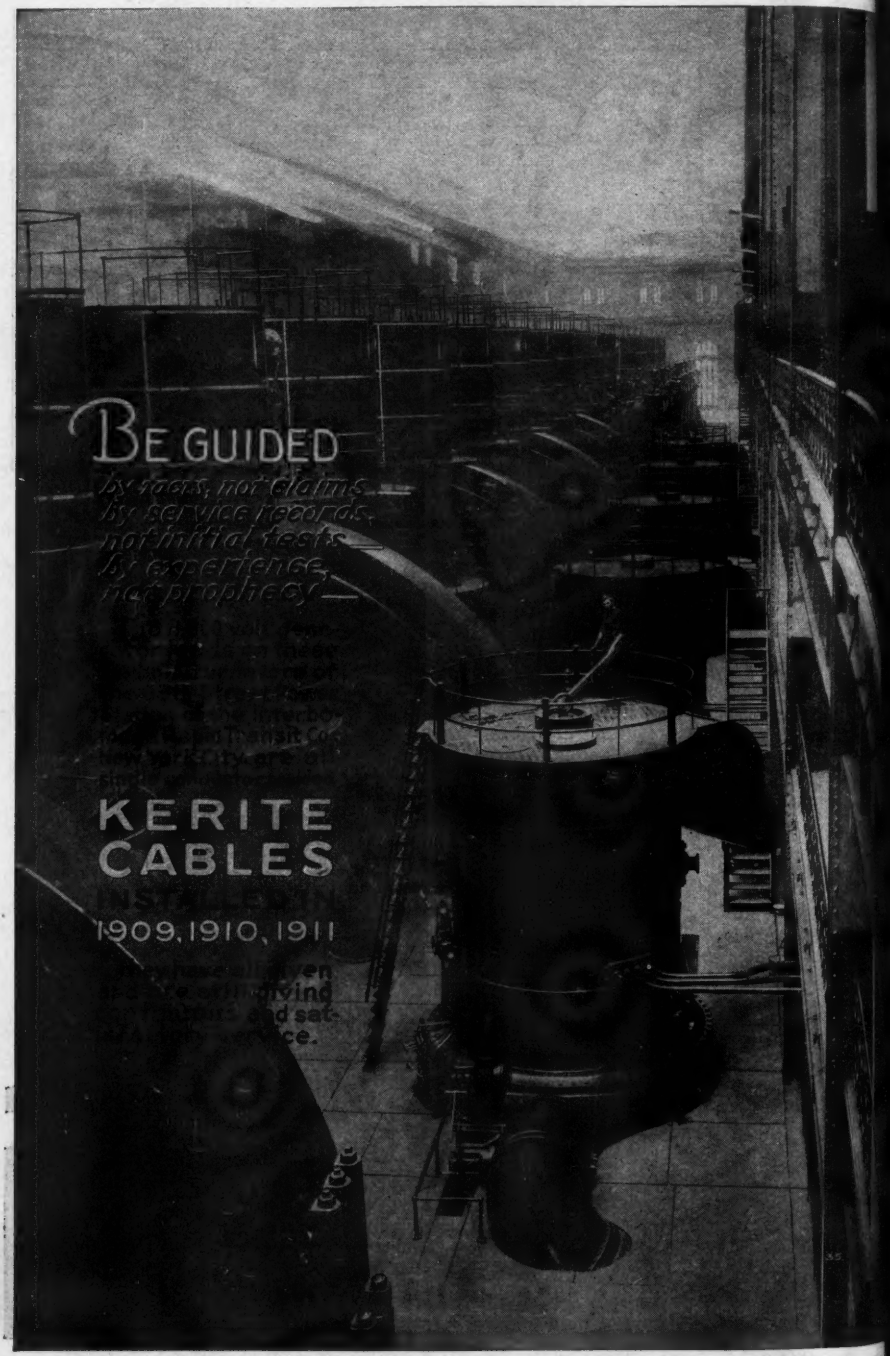

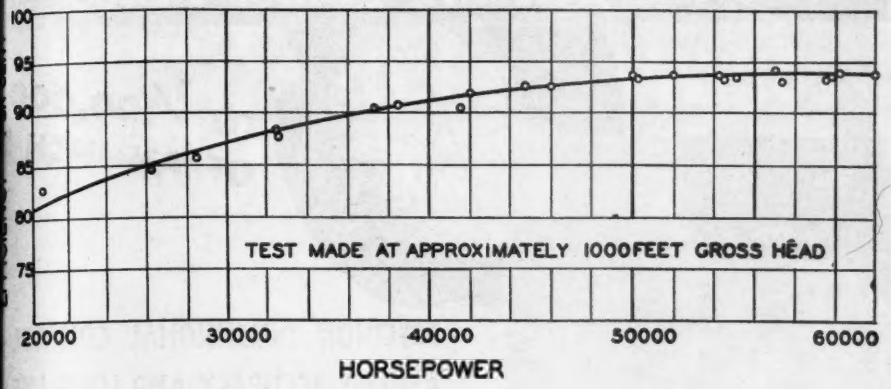

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60,000 H.P.—925′ NET HEAD—450 R.P.M.

VERTICAL FRANCIS TURBINE

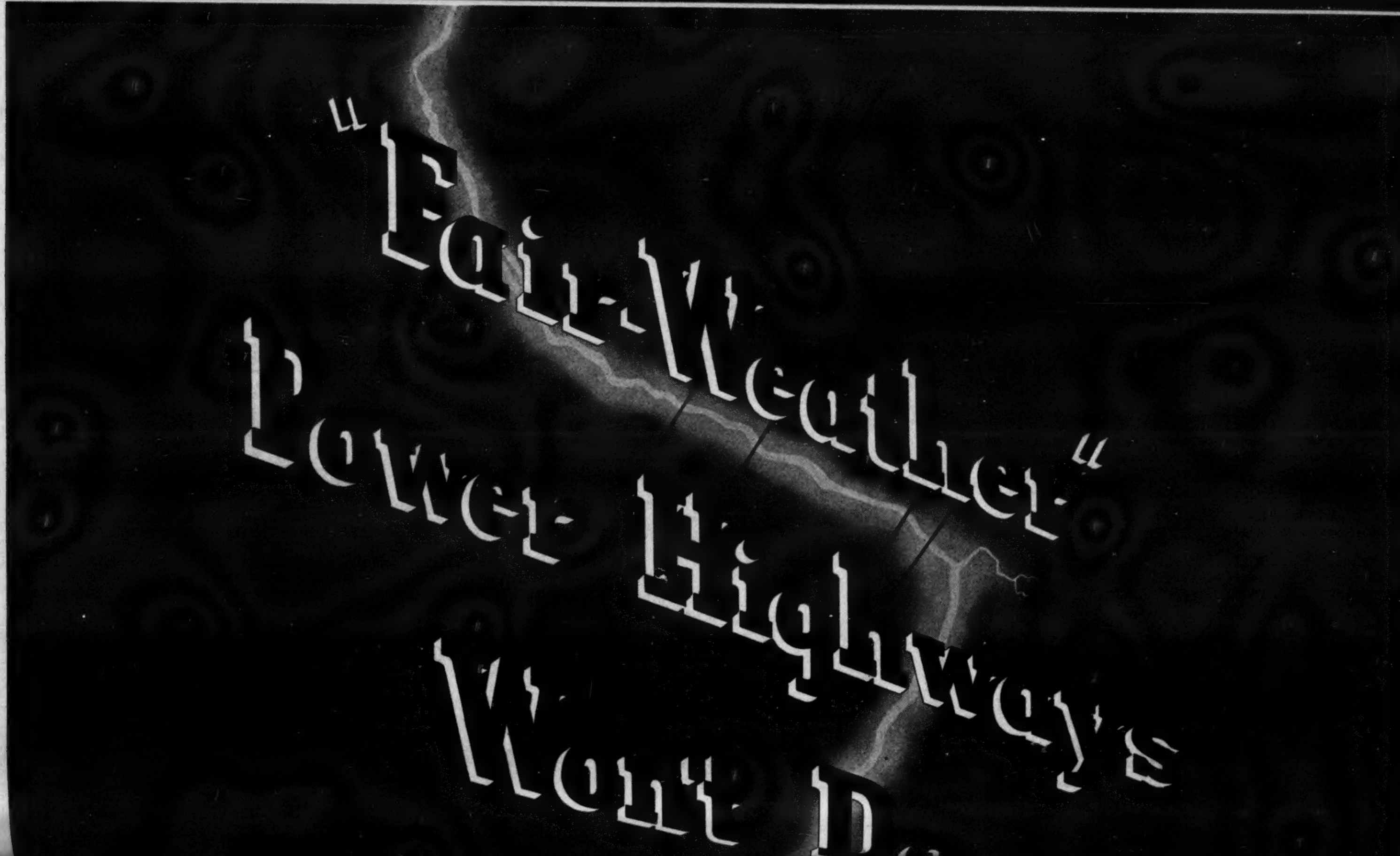
Built by

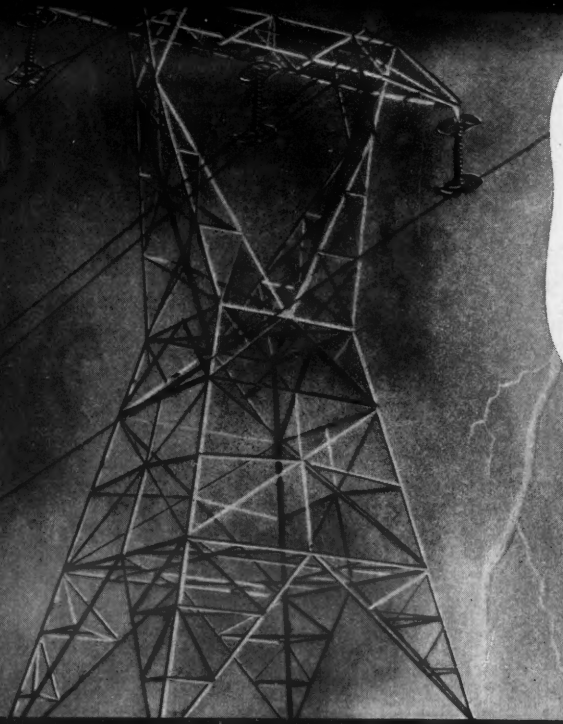
Newport News Shipbuilding and Dry Dock Company

(Hydraulic Turbine Division)

Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.


"Fair-Weather"
Power Highways
Won't



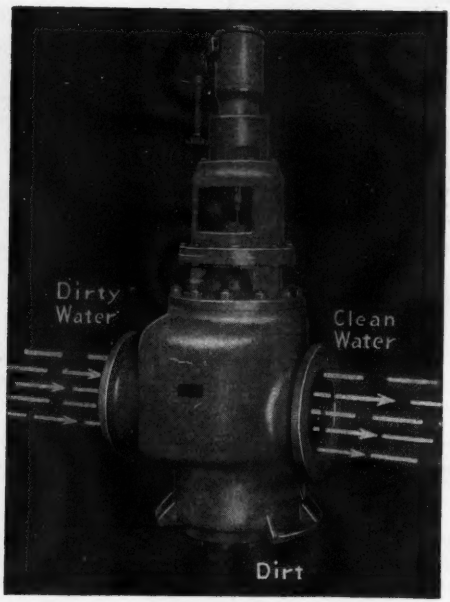
When power fails, production grinds to a stop.
Important in the dependable delivery of power are the transmission towers that support the power lines. Not surprising, therefore, that operating engineers everywhere turn to Blaw-Knox transmission towers. Engineered into them is the satisfying certainty that they will not only make a good appearance during fair weather, but that they will withstand the stresses of storm, flood and frost. Because they are correctly designed, fabricated and galvanized, their maintenance cost is extremely low. A discussion is invited with regard to any power transmission problem.

BLAW-KNOX TRANSMISSION TOWERS

BLAW-KNOX DIVISION OF BLAW-KNOX COMPANY 2013 FARMERS BANK BUILDING, PITTSBURGH, PA.
NEW YORK • CHICAGO • PHILADELPHIA • BIRMINGHAM

Water *without* dirt

without trouble
without cleaning
without stopping



Elliott self-cleaning strainers are going strong in all the industries that demand clean, dirt-free water. They clear water for cooling bearings, cooling transformers, cooling generator coils, supplying many other needs of widest range.

They make no demands upon anyone's time or attention, these Elliott self-cleaning strainers. They clean themselves, back-flushing the dirt out of section after section, isolated or blanked off by a slowly rotating element. Fibrous matter cannot mat or clog them, either — the design of the straining element provides against that.

They are themselves immune to ordinary trouble. Motor and driving gears are on top, out of harm's way. Lower bearing is water-lubricated, of a cutless design which dirt cannot harm. Operation is smooth, quiet, slow, and almost wearless.

Elliott also makes Twin Strainers for manual cleaning. One chamber always working. Also single strainers, used where occasional time-out for cleaning is permissible.

If you have a straining problem affecting water or any other liquid, ask us to work with you.

ELLIOTT
Self-Cleaning
STRAINERS

ELLIOTT COMPANY

Accessories Department

JEANNETTE, PA.

DISTRICT OFFICES IN PRINCIPAL CITIES

Utilities Almanack

Due to war-time travel restriction, conventions listed are subject to cancellation.

JULY

22	Th	¶ *League of Iowa Municipalities will convene, Cedar Rapids, Iowa, Aug. 16–18, 1943.*
23	F	¶ *International Association of Electrical Inspectors, Northwestern Section, will hold meeting, Seattle, Wash., Aug. 26, 27, 1943.*
24	Sa	¶ *International Association of Electrical Inspectors, Southwestern Section, will convene, Los Angeles, Cal., week of Aug. 30, 1943.*
25	S	¶ *American Institute of Electrical Engineers will convene, Salt Lake City, Utah, Sept. 2–4, 1943.*
26	M	¶ *International Association of Electrical Inspectors, Western Section, will hold meeting, Chicago, Ill., Sept. 13–15, 1943.*
27	Tu	¶ *Municipal Electric Utilities Association of New York State will hold meeting, Lake Placid, N. Y., Sept. 15–17, 1943.*
28	W	¶ *American Society of Civil Engineers opens meeting, Los Angeles, Cal., 1943.*
29	Th	¶ *American Water Works Association, Rocky Mountain Section, will hold annual meeting and war-time conference, Denver, Colo., Sept. 16, 17, 1943.*
30	F	¶ *American Water Works Association, Western Pennsylvania Section, will hold annual meeting, Pittsburgh, Pa., Sept. 22–25, 1943.*
31	Sa	¶ *League of Virginia Municipalities will hold session, Roanoke, Va., Sept. 26–28, 1943.*

AUGUST

1	S	¶ *National Safety Council will hold meeting, Chicago, Ill., Oct. 5–7, 1943.*
2	M	¶ *American Gas Association will hold meeting, St. Louis, Mo., Oct. 11–13, 1943.*
3	Tu	¶ *American Water Works Association, California Section, will hold meeting, Los Angeles, Cal., Oct. 27–29, 1943.*
4	W	¶ *Investment Bankers Association of America will hold session, New York, N. Y., Nov. 3–5, 1943.*

Courtesy of Contemporary Arts *From Elsie Hafner, N. Y.*

"San Francisco Gothic"

By Harry Dix

Public Utilities

FORTNIGHTLY

VOL. XXXII; No. 2 JULY 22, 1943

The Human Sardine After the War

Will the present record-breaking war loads of passenger transit companies mean continued increased business, partially at least, in the postwar period? Or do they represent a sort of Indian summer to be followed by a further decline of transit business in the competitive struggle against the private automobile? The answer depends on sound planning and smart industrial management. Preliminary steps can be taken now, without distracting management from the war job of moving the masses, to put war transit on a more secure economic basis.

BY RAYMOND S. TOMPKINS

WHAT about postwar planning for that noble public utility customer, the human sardine? Well, folks, it's going on right now. Step to the rear please; plenty of room in the rear, so get away from the front door and make room for some more of these war workers, won't you please lady? Thanks; and things will be more comfortable after the war, lady. Nowadays the customers have to ride on Uncle Sam's terms. When it's all over we'll be glad to get the customers on their own terms.

Well, maybe so. But not all the postwar planners for public transit are thinking that way. In fact their thoughts are numerous and divergent. However, the differences in the thinking of the local street-car and bus men are probably less miraculous than the fact that they are able to do any postwar

thinking at all. Just planning to keep 'em rolling next day is enough for the average operator and too much for some. One company in a war-industry city of a million people regularly has as many as fifty busses laid up in the shops on an average week day morning owing to the lack of enough spare parts for repairs, or enough tires. The same city has over 1,000 street cars, including 300 of the modern streamliners; and a daily average of 100 out of the thousand will be immobilized for lack of nuts, bolts, and screws.

Getting tires for busses and trackless trolleys is as hard a job for transit men as it is for individual motorists. The whole business is one long, dreadful headache and the pain is but slightly assuaged by the most gigantic passenger revenue since the lush days when the original horse-car promoters, inspired in the dead of night with a new idea for a franchise, would leap from bed and go out and measure a roadway for tracks by moonlight in their nightshirts. These Gargantuan earnings are a headache because the public mistakes them for fat profits and it is a tough business trying to tell them different. Federal taxes are up more than 200 per cent. All taxes are up. Wages are the highest in history. All operating costs are higher. There is little more left in the pot nowadays than there was before the rush began.

So the war-time transit men have little time to think about postwar planning. A few prefer not to think about it at all. They believe the business to be in somewhat the situation of a condemned man standing on the trapdoor of a modern gallows eating the conventional breakfast of ham and eggs. There is plenty of ham and eggs and the man is being invited to stuff himself with as much as he can hold, but when the time comes the trap will be sprung and the man will drop through it, ham, eggs, and all. That's as far as some of the thinking goes.

But most think otherwise. These see golden days ahead for the street-car business when the war is over and Mr. Jeffers has gone back to the Union Pacific (if he doesn't go earlier), and there is no OPA nor ODT and no gasoline ration books and no A, B, and C windshield stickers.

They reason as follows: Hundreds of thousands of people are riding street cars and busses now who hadn't ridden them for ten or fifteen years before Pearl Harbor. Wealthy dowagers have recently given up taking their chauffeurs with them on the street cars to show them how to get on and off and drop the proper fare in the right slot. They have now learned how to do it for themselves. These people have rediscovered how convenient transit service is. They now know that the street car or bus which they can get almost at their doors will take them right to the office, or the bowling alley, or the movie, or to church. They don't have to buy gas for it; they don't have to drive it; they don't have to park it. Ergo, they will never want to go back to prewar automobile transportation for everyday urban travel. They will stick to the street car and the bus. So goes this type of reasoning.

These two extremes may be called the "gallows trapdoor theory" and the "pot-of-gold theory." The territory in between echoes with the clash of debate and argumentation.

Depreciation of Street Cars and Busses in War Time

"In normal times street cars and busses wear out in an easily calculated period of time. In these war times they are wearing out faster. Their depreciation is accelerated by the bigger crowds, the constant, unremitting use, the lack of normal shop care and attention. When the war is over these vehicles will be closer to the end of their lives than they would have been if there had been no war. Enough money for quicker replacements must be on hand."

Here are the transit men who believe that the business does have a chance to survive but only provided it pursues the right program.

What is the right program? That is what the arguments are about. There are many arguments because there are many items in the program. Some may be lumped under the heading, "Continuing War-time Innovations after the War." There are many of these innovations in street-car and bus operation. They are made necessary by the tremendous increase in passengers, owing to gasoline and rubber shortages, coupled with a shortage of transit equipment; in brief, trying to carry twice or three times as many passengers with fewer than normal vehicles. Making bricks without straw is child's play by comparison. One of these innovations is "staggered hours." Another is the "skip stop." Another is the complete abandonment of bus (rubber-tired) lines which parallel rail lines, or even where there are rail lines within reasonable walking distance of rail lines. Another is the curtailment of many bus lines when the gasoline and rubber shortages hit them.

These are hardships, but the public in big cities all over the country is putting up with them patiently, particularly in cities where the operating companies have made the whole story clear to the customers.

THESE hardships are being endured on the ground that they will help in the winning of the war. What, then, when the war is over? Well, some experts are (as above stated) for "continuing war-time innovations." This means they would keep right on skipping stops, staggering hours, and dropping the abandoned paralleling lines.

"Retain war-born benefits," writes one transit expert and he reveals one way of doing it without having the blow stagger the customers. Stop calling them "staggered hours," he says, and start calling them "dovetailed working hours." This he claims will lift the curse so that schools will keep right on opening at 9:45 A.M., department stores at 10 or 10:30 A.M., factories will keep on working a couple of night shifts as well as day shifts, and office workers will keep on reporting for duty at odd hours so as not to crowd out the others. If the comfort and convenience of this is pointed out to "a receptive public," and people recognize it for the traffic panacea that it is, then (so the "dovetailed hours" theory runs), this "war-born benefit" can be retained without pain to the public and with advantage to the transit operator.

A similar plea is made for continuing the "skip stop." This, too, has been renamed for readier public acceptance. In some cities it is being called the "victory stop." Whatever it is called it means cutting out customary stops for the purpose of speeding up service and, in the case of busses, reducing wear and tear on brakes, tires, etc., and reducing gasoline consumption.

IT is a fine idea for war time. But in some towns during peace time the very name "skip stop" was anathema to the public, at least to that portion of the public whose stops were skipped. A good deal of this feeling has held over into the war days. People will fight, bleed, and die for victory, but when it comes to cutting out street-car and bus stops they don't see why the management should pick on them. The job has been done, nevertheless, in most large cities by big advertising campaigns explaining that the war makes the skip stop or the "victory stop" necessary and that the Office of Defense Transportation demands it. This has done the trick but it has not eliminated the grumbling as, of course, it was not expected to.

But if the customers grumble about giving up their car stops and their old accustomed working hours as a patriotic war service, what may they be expected to do if they find that they are not going to get them back when the war is over? A considerable bloc of expert transit opinion believes they will raise merry hell and that hence there had better be some pretty careful thinking about this notion of "retaining war-born benefits," because whether a thing is a "benefit" or not depends entirely on the point of view. Theoretically the skip stop and the staggered (or "dovetailed") hour are benefits to the transit user, giving him greater speed and comfort in his ride. But they haven't been sold to him on that basis during the war; they have been sold to him as war measures, and people have a way, when a war is over, of wanting to forget all about it for awhile and about everything relating to it. A shortage is a shortage to most people, whether in steak and potatoes or in stops and street-car seats. It is only human nature to welcome the end of a famine.

CLEARLY this phase of the transit industry's postwar problem is a problem in public relations and merchandising. If the street-car men can resell the hardships of war by describing them as the softships of peace, they will be good!

THE HUMAN SARDINE AFTER THE WAR

Some are thinking of approaching the war-time sardine with a questionnaire asking him what his postwar intentions are. Something like a Crosley or a Gallup poll. "Are you going to keep on riding street cars after the war?" is an interesting question, but would the answers mean anything? Who knows exactly what he is going to do after the war? What Tennessee mountaineer now drawing down big money as a riveter in some big city shipyard and riding the street cars four times a day knows even where he is going to live after the war? If "fact-finding" schemes could be depended upon to tell street-car managers what they can actually look forward to in the way of postwar business and what, if anything, they could do to boost it, it would be wonderful. Maybe some of them can. At any rate, it is not unlikely that the stunt will be tried here and there.

But feeling the war-time straphanger's pulse is only one phase of the problem. No matter how hard the public relations men and their fact-finding experts work they will have two strikes on them in advance unless their companies are able to take up the modernization of their systems where they left off just before Pearl Harbor, and carry it to conclusion. This means they must have money for rehabilitation. Out of their swollen gross earnings foresighted managements are laying away funds for this purpose; and this is the most valuable and practical kind of postwar planning. Such items as "deferred maintenance," and "special war reserves," and "accelerated depreciation" appear in the monthly statements of a few well-managed transit companies. These items are aptly named.

NORMAL maintenance is, of course, deferred because parts cannot be bought, repair materials cannot be purchased, sufficient men cannot be hired. Maintenance has halted or at best limps along at about 60 per cent of normal, but the need for maintenance continues. The money for it is on hand but it cannot be spent. Likewise "accelerated depreciation" is an accurate description of a war-time condition. In normal times street cars and busses wear out in an easily calculated period of time. In these war times they are wearing out faster. Their depreciation is accelerated by the bigger crowds, the constant, unremitting use, the lack of normal shop care and attention. When the war is over these vehicles will be closer to the end of their lives than they would have been if there had been no war. Enough money for quicker replacements must be on hand.

¶ "HUNDREDS *of thousands of people are riding street cars and busses now who hadn't ridden them for ten or fifteen years before Pearl Harbor. Wealthy dowagers have recently given up taking their chauffeurs with them on the street cars to show them how to get on and off and drop the proper fare in the right slot. They have now learned how to do it for themselves. These people have rediscovered how convenient transit service is.*"

One street-car company has set the pace for its own city in respect to these postwar reserves to be invested in taxtice throughout the country. This is the Baltimore Transit Company whose president, Bancroft Hill, started setting up a deferred maintenance account months ago, even before the Interstate Commerce Commission approved the idea for the steam railroads. It looked like such a good idea that Mr. Hill was appointed chairman of Baltimore's committee on postwar planning by the then mayor of the city, and his first report laid down the law of adequate postwar reserves and is attracting no-free war bonds as fundamental to any sensible postwar planning by anybody. The notion is spreading like wildfire, having been embraced by Senator George (Democrat of Georgia), chairman of the US Senate Finance Committee, who is pushing this street-car man's idea for all it's worth.

If the whole transit industry were reasoning and acting thus the most important postwar planning item would be in the bag and the operating boys could indulge themselves in the luxury of arguing over details like "dovetailed hours." But not all of them seem to be taking the long view.

Nor, in many cases, does the public. Mistaking the big passenger revenue figures for profits, the public, in some instances, is demanding reduced fares and increased taxes. Here and there, too, stockholders, who haven't had what an old poker-playing reporter friend of mine used to call "a taste of cold squirrel" for many years, are demanding something on the preferred and something on the common. Reserves? Well, why? And why do they need to be so large? How do you justify them? This attempt to chip and chisel away at the sensible reserve funds of the transit business seems incredibly shortsighted.

Of course, none of these reserves for postwar rehabilitation of transit systems is nearly big enough, but only the most far-sighted operators realize it. To speak of "taking up modernization where it was dropped just before Pearl Harbor," is not saying much. Modernization of transit operations before the war was nothing to brag about. Ten years ago (1933), only 62 new surface street railway cars were bought by the entire industry. There were a lot of new busses (1,280 that year, the records show, but only 62 new street cars. The following year there were only 48.

Two years later, however, there was a new invention in the street-car business—the sleek, streamlined "PCC" car, quiet, with resilient wheels rubber-cushioned; with rubber in springs, axles, motor-housings; with three sets of brakes and an automatic acceleration that made it one of the fastest things in traffic. Annual purchases of these revolutionary vehicles started at 100 in 1935, and increased slowly but steadily until 1941, when 522 new street cars were bought and something brand new in surface transit came to a dozen or more big cities. At the same time smarter new motorbuses and streamlined trackless trolleys appeared and more and more operating companies went in for "modernization." Total new vehicles constructed and purchased in the whole nation during 1941 (the last "modernization" year) numbered 8,299.

This was something, but it wasn't

much for one of the biggest industries in the country, when you consider that the total number of all vehicles on hand in 1941 was about 80,000.

The fact is it took more than forty years to produce any really important modernization of electric street cars. There won't be that much time after the war is over. If modernization of street-car lines, bus lines, trackless trolley lines doesn't take place quickly and smartly, then modernization of automobiles will finish the transit business off in a hurry. This, at any rate, is the view of the forward-lookers.

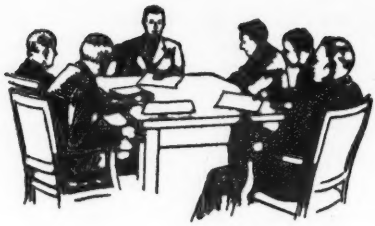
However, they believe the postwar outlook is anything but bleak for operators who look alive and save their money. Larger cities are envisioned. Expansion of industries and communication systems means expansion of transportation systems.

ALREADY the United States Census Bureau is doing some crystal gazing into the future population growth of cities and classifying the prospects of the war-production centers as "best," "superior," "excellent," "good," and "fair." But they are likewise studying the cities which the war has helped only temporarily or not at all, and even discovering a class of cities which seem to be losing ground and slipping industrially with little chance of reversing this downward trend. There are a good many of these towns and it will be discouraging to their postwar planners of every kind and complexion when they learn the census man's diagnosis. It will certainly discourage the postwar planners for the transit business.

But only in those doleful towns, not in the up-and-coming burgs. There the street-car and bus men look forward to "vehicles of the future" which will be even quieter and more streamlined, more comfortable, more swift, and more beautiful than the busses and street cars that had begun to appear before Pearl Harbor. They recall that also before Pearl Harbor the public had begun to catch on to the steadily increasing advantages of street-car and bus travel and that the "rides per capita" curve had begun reversing its direction in 1938, only a little at first, but more noticeably in 1939. They believe that with the war boom over they can swing back again into that steadily mounting curve and keep it mounting by modernization, good service, and brisk salesmanship. They have no fear of arguments about "retaining war-born benefits." They figure that the human sardine, back home from his hard war in 100,000 tightly packed rolling sardine cans, will tell them what to do about those.

¶ "THE storm of public resentment is rising. If you want a measure of how fast it is rising, just listen to the cries of pain and anger that come from the few self-appointed labor leaders in reply to my public remarks."

—EDWARD V. RICKENBACKER,
Aviation executive.



What's behind the Attack On NRECA?

The recently formed National Rural Electric Coöperative Association is truly a grass-roots movement, says the author, formed to assist the rural electrification movement and the farmers it was designed to benefit.

By CLYDE T. ELLIS
EXECUTIVE MANAGER, NATIONAL RURAL ELECTRIC COÖPERATIVE ASSOCIATION

WHAT was behind the bitter attack on the National Rural Electric Coöperative Association by Judson King in an article featured in the July 8th issue of PUBLIC UTILITIES FORTNIGHTLY? Why should this relatively new, independent association of rural electric coöperatives command so much attention? Who would be alarmed by the fact that its membership now totals 643,900 farmers in 46 states? Have America's 741 electric coöperatives overstepped themselves in their efforts to make electricity available to more and more farmers to help them produce more and more food?

The coöperatives are successful, independent, free enterprises, in no way connected with the Federal government. They have borrowed money from the Rural Electrification Administration and they have paid back all maturities to date plus $10,039,000 in advance. They are not subsidized. They are owned and operated by the farmers. Their only ambition is to make electricity available to every farm home at the lowest possible cost. Truly, they intend to serve, ultimately, the 3,000,000 farm homes which are still without electricity. They have no desire to disturb the private utilities; they are prohibited by law from taking a customer away from them. Wherein, then, have they committed an unpardonable sin?

NRECA is purely a grass-roots organization. Ten of its eleven directors are elected annually by the coöperatives, one from each region. The eleventh is elected at large at its annual convention. The organization is nonpartisan. Democrats and Republi-

cans are about evenly divided on the board; one is a Progressive. Public power and REA leaders in all parties had long advocated such an organization as "the program's only hope against the onslaughts of the mighty power trust." REA, as a government agency, is not free to challenge the devastating attacks of the power monopoly. The power trust does fear the example being set by the co-ops, for they are proving that even in sparsely settled areas power can be had at lower and lower rates. The private utilities have their national association, the Edison Electric Institute.

PRESIDENT Roosevelt said of NRECA in his telegram to its first convention in St. Louis on January 19th:

> . . . I wish that you would also express my appreciation of the importance of such an association, representing hundreds of thousands of farmers who have joined on a coöperative basis to assure their families the economic and social advantages of plentiful electricity at low rates . . .
>
> . . . For this reason I welcome the creation of your National Association. It will be a healthy influence in our national life. I shall count upon it to assure a better understanding of our national problems in war and to contribute materially to the solutions which alone can assure victory and lasting peace.

Former Senator George W. Norris (I) began his address to the convention with these words:

> I am both proud and honored to be invited to address this national convention.

Senator Hugh A. Butler (R) said in addressing the convention:

> . . . It has been a genuine pleasure to have had the opportunity of mingling with this group of people in a convention, that, I think, is making history . . . This association is purely rural. Your objectives are rural . . .

Congressman John E. Rankin (D) wrote the association on May 22, 1943, in a letter published in its June bulletin:

> I want to take this opportunity to thank you and your splendid organization . . .
>
> It is gratifying to note that the farmers on these rural lines are waking up to the fact that organization is necessary for them to secure justice in national legislation. If they will only stand together, and work together, and let their organization be known, we can electrify every farm home in America, and reduce the charges to the lowest rates consistent with economic generation, transmission, and distribution of electric light and power.

THE organization has been definitely and universally welcomed by all the real REA and public power leaders of all political parties in and out of Congress. Surely then the attack was not political.

Electrical World, an industrial publication which generally supports the position of the private utility industry, has, by the same token, been consistently critical of the electric coöperatives and their state and national associations. It is noteworthy that some co-ops which receive this publication claim they do not know why it is sent to them, although, presumably, some responsible source is paying for subscriptions.

From the Atlantic to the Pacific certain power interests and other enemies of the coöperatives have spread erroneous and malicious propaganda designed to injure their national association. The innocent co-ops never know whence will come the next blow. They only know that it will come.

Mr. King stated that REA Administrator Harry Slattery is under fire for "incompetency" and implied that the administrator's troubles arose because he, Mr. Slattery, sided with the insurance companies of the country in opposing the plan of the co-ops to carry their own insurance. (Mr. Slattery had

previously approved the plan in detail.)

Mr. King also charged that NRECA is responsible for a "campaign" to oust Slattery because of his action on insurance. His statements are not true. The so-called "campaign" started in the Congress long before Mr. Slattery's disapproval of the insurance program, and the National went to his aid many times.

The National Rural Electric Coöperative Association has consistently refused to discuss with the press or otherwise publicize the issue of Mr. Slattery. Although it is evident from Mr. King's article that he was in collaboration with Mr. Slattery, for he quoted from his files, and although Mr. Slattery has given out other statements, we still decline—even at the expense of being misunderstood—to enter into a public discussion here of a matter that is being dealt with elsewhere. Mr. King's statement that we sent "releases to the press" is erroneous. Because of his many inaccurate and misleading statements, we think Mr. King has done the cause of rural electrification a grave injustice and perhaps serious injury by his article.

THE Rural Electrification Administration is, we believe, one of the greatest agencies of the government. Its employees as a whole are unexcelled. Its achievements are phenomenal and will surely go down in history as the American farmers' greatest program of all time.

Aside from these broadsides against the co-ops' association being a part of a national power-trust effort to scuttle the rural electric program—and we do not charge that Mr. King is consciously a part of that campaign—the reasons for this attack are to be found in Mr. King himself.

Here are some *facts* which Mr. King did not state in the article:

1. That at the time he wrote the article, and for months prior thereto, Mr. King was being paid $6,000 a year from REA funds for "consulting the administrator."

2. That he (Mr. King) was under fire in the Congress as an alleged "pensioner," living in Washington and "making little or no contribution to REA." (REA is now in St. Louis.) His article therefore was a defense of himself and his employer, and for that defense he actually received compensation.

3. That Robert B. Craig, ex-Deputy REA Administrator, whom he charged with conceiving the National Association for political purposes, had urged Mr. Slattery to remove Mr. King as a "useless fixture" and had forced a reduction in his number of per diem days per month.

❦

¶ "THE *coöperatives are successful, independent, free enterprises, in no way connected with the Federal government. They have borrowed money from the Rural Electrification Administration and they have paid back all maturities to date plus $10,039,000 in advance. They are not subsidized. They are owned and operated by the farmers. Their only ambition is to make electricity available to every farm home at the lowest possible cost. Truly, they intend to serve, ultimately, the 3,000,000 farm homes which are still without electricity.*"

ORGANIZED 1913 — *To Build the Needed New and Guard the Valid Old* — NON-PARTISAN

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June 18, 1942.

Mr. Wilhall Sullivan, Superintendent,
Tri-County Electric Cooperative,
Lafayette, Tennessee.

Dear Mr. Sullivan:-

Under other cover I am sending you copy of Bulletin No. 202, recently issued, which contains some information germane to the rural electrification situation which I think will interest you.

Permit me to congratulate you upon the organization of the National Rural Electric Cooperative Association to defend the cooperatives. I have been on the firing line for public power since 1909. I wrote my first articles on rural electrification in 1922, after an investigation trip to Ontario. I have been intimately associated with REA from the beginning and am, as you possibly may know, Consultant to the Administrator. If this experience has taught me anything, it means that your new organization is vitally needed and we have got plenty of battling ahead to hold our own and advance the cause.

I am sure you are aware that the fight for Federal Flood Control Power Dams, Municipal Power, Rural Electrification through Cooperatives and stricter regulation of the power trust is all one big fight.

With best hopes for the future, I am,

Yours very sincerely,

Judson King

Judson King,
Director.

JK:S

4. That only a year ago Mr. King was an applicant for the position of executive manager of this National Association which he today so severely abhors. We have reproduced here a letter he wrote to a member of the National board. He sent identical letters to all other members. Only thirteen months have passed since Mr. King wrote the letter reproduced above.

King Attacks Co-op Insurance Companies

INASMUCH as Mr. King also attacked the insurance companies, organized by the coöperatives, it must be stated that they, like NRECA, are owned and controlled absolutely by the coöperatives. No board member of the as-

sociation or of the companies could ever profit one penny from either.

The coöperatives have been forced to pay out to date more than $15,000,000 for insurance and the figures indicate that had they carried their own insurance, as do many such groups today, they could have saved $8,000,000. They never have been able to obtain line insurance although it was clearly intended by the Congress that they should do so. Not only are all the rates quoted to them excessively high but the insurance companies charge the co-ops 50 per cent more for workmen's compensation insurance than they do the private utilities operating across the road. It is interesting that most of the big insurance companies have large utility investments.

Mr. King quoted a number of "questions and answers" which he said "the executive manager, Clyde Ellis, was preparing to send out" and "this shows that the enterprising promoters were then planning, not only to insure the co-ops, *per se*, but to vend all sorts of insurance to individual members and their immediate families." This is positively not true. Neither the NRECA board nor its executive manager ever saw them before. We have since learned that they were prepared and handed to Mr. Slattery by his own Max Drefkoff, head of REA insurance section.

We know the association never had any such thought.

Said Mr. King, "On January 6, 1943, two companies . . . were incorporated in Maryland by two directors and the two counsel of the association acting as individuals." This is a half truth. Only individuals could legally become the incorporators and it was provided that the companies be immediately transferred to the coöperatives.

Continued Mr. King, "On March 25th, in St. Louis, Executive Manager Ellis and others came, laid upon his (Slattery's) desk a prepared letter for his signature, endorsing the mutuals, to be mimeographed and sent to all coöperatives, together with a copy of the pamphlet above described." There is not a word of truth in this statement. Executive Manager Ellis never saw any such letter.

On insurance, the coöperatives' objectives were:

1. Dividends to co-op members through reduced costs.
2. To provide a safety program to reduce loss of life and limb. (The co-ops are paying for a safety program without getting it, because their insurance is scattered among 400 companies, and no one company carries enough to justify furnishing the needed safety engineers.)
3. To provide line insurance, at their election.

Not a dime of Federal money was to be used, directly or indirectly.

Mr. King stated that Robert H. Shields, solicitor, Department of Agriculture, had issued an interdepartmental opinion to the Secretary of Agriculture sustaining the power trust view that the coöperatives have no right to set up their own mutual insurance program without the approval of the REA Administrator. This was the first we knew of it. We were not able to learn more until it appeared five days later—of all places—in the *Electrical World*. It has still not been officially released.

The coöperatives may be forced to abandon the insurance companies

which they have organized, but they will not abandon their efforts to relieve themselves of excessive insurance costs. Through pooling or otherwise they are determined to find the answer.

Mr. King made the positive statement that "many thousands of dollars have already been received" from the co-ops to finance the insurance companies. This is untrue; for not a dime has been received. What is more amazing is that *Electrical World,* in its July 3rd issue, carried an article entitled "REA Co-ops May Reclaim NRECA Insurance Funds" which "they have advanced for the financing of the two insurance companies." Mr. King is the only person who has ever made any claim of such advances. We wonder where *Electrical World* got its information about these large advances.

"On April 23rd," said Mr. King, ". . . President Tate called Mr. Slattery . . . and threatened to drive him out of public life." This is too ridiculous to merit a reply. But the members of the National board and I heard that conversation. Mr. Tate made no such threat, nor did he say an unkind word to the administrator.

It is to the advantage of the power trust to have those within the public power movement, who have their grievances, agitate themselves into a state of revolt.

These being the facts, we prefer to leave the reader free to form his own conclusions as to the motives behind the attack on the National Rural Electric Coöperative Association.

Forgotten Heroes

A record of persons who have distinguished themselves by ingenious use of telephone booths.

NAME	PLACE	EVENT
Horace E. Lindsay, Jr. (Age 7)	Department Store Savannah, Ga.	Successfully defended for one hour a besieged position in a booth he claimed was a "pill box."
Lucinda Ann Patterson	Woppinger Falls, N. Y.	Held a 2-hour conversation with a "boy friend" with whom she had an engagement that same night.
Sam Luchino	Merchandise Mart Chicago, Ill.	Rehearsed operatic arias to his singing teacher while the latter was quarantined with measles.
Will H. Murdock	Delicatessen Store Seattle, Wash.	Was charged with using booth light socket for operating an electric razor with which he shaved himself.

Utility Regulation Began In the Bay State

Long and honorable career, 1885-1919, of the old Massachusetts Gas and Electric Light Commission, the first of the state commissions regulating gas and electric companies.

By EARL H. BARBER

With the prospect that the blight cast over the regulation of public utilities for the last forty years by the Supreme Court's "rule of law" may be lifted, and with so many commissions, both state and Federal, which have had their entire lives shaped by that rule, there are some timely lessons in the history of the old Massachusetts commission — a commission which not only kept the Supreme Court strictly out of its affairs, but achieved an outstanding place in the field of regulation.

The gas and electric light commission of Massachusetts was established in 1885, a few years before the Supreme Court reversed itself by declaring that the reasonableness of a rate was a judicial question, and more than ten years before the court foreshadowed its "rule" by Smyth *v.* Ames.

By the time the rule began to evolve from the dicta of this case the commission had the experience of a quarter of a century behind it. Farsightedly and boldly it opposed the extension of the rule to Massachusetts: Successfully, for none of the commission's decisions (or those of its successor, the department of public utilities) have ever reached the Supreme Court, although large surpluses invested in plant would have made ripe objects for the application of the "fair value" rule.

When regulation came into popular favor some thirty years ago the soundness of the Massachusetts companies and the established position of the commission prompted various publicists to account for the success that had been achieved, and to ascribe it to some policy or regulatory rule. But there was little agreement among the causes ascribed to the commission's success, and perhaps less agreement with the facts. Not surprisingly, because part of the accomplishment credited to the commission was the direct result of the public utility law rather

than regulation, and the rest was the result of nothing but the application of such intangible qualities as ability and a single devotion to the public service.

A review of the early days of regulation in Massachusetts indicates that the period of the commission's fortuitous success lasted about twenty years, roughly from 1885-1906, and that its most constructive work was done in the ten years 1906-1916.

Preliminary Legislation

THE establishment of the commission in 1885 did not mark a change either in legislative policy or practice. It was only a minor and incidental delegation of legislative power even if it did lay a sound foundation for what later developed into a regulatory commission.

In 1885 the electric industry was in its infancy; but gas companies had been in operation for over half a century, the law relating to them was already taking form, and it was evident that there was a growing consciousness that they were invested with a public interest beyond that of ordinary business.

The first gas company in the state had been chartered in 1823. By 1855 there were over fifty, all established by special act. In that year a general act was passed authorizing ten or more persons to form a gas company on compliance with certain conditions.

Monopoly was not specifically granted. (Competition had been negligible, and so continued for years to come.) As in the case of other corporations the legislature was careful to grant no rights which were not subject to repeal or modification. Sworn returns were required to be made to the state each year giving the major facts of organization and financial condition.

A FEW years later, in 1861, an act was passed which contained the first hint of regulation. It established standards of measurement and illuminating value, and created the office of "inspector of gas meters and illuminating gas" with duties of testing and sealing all meters, retesting them on complaint, and advising local authorities of compliance with legal standards.

In 1886 stock dividends were prohibited. In 1870 initial issues of stock were required to be paid for in cash. In 1873 all subsequent issues were required to be sold at public auction, at not less than par, and issues were limited to the amount required to secure the necessary funds. (As yet there was no limitation on bonds except the general business law provision which made officers personally liable if a company's debt exceeded its capital.)

Under these provisions 61 gas companies were in operation when the gas commission was established in 1885. Their consolidated balance sheet gave assets of $14,500,000 against capital stock of $11,500,000, other liabilities of $500,000, and a surplus of $2,500,000.[1] The average rate had declined to $1.72 from the $4 of the early days.

In the face of this exemplary showing it is evident that there was nothing in the general condition of the gas industry at this time which would give rise to a demand for regulation, but in

[1] There had been a bit of stock watering prior to 1868, but the growing tendency to invest surplus earnings in plant had reduced inflation to negligible proportions.

the local area of greater Boston there was a situation which may have turned thoughts to the advisability of control over rates.

JUST before 1875 a number of suburbs had been merged with Boston. The enlarged city was supplied by eight gas companies, each with a district defined either by charter or mutual agreement, and each with its own rate which might differ widely from that of its neighbor. In the next decade the areas between the merged communities became settled, with the result that a continuous city was divided into sharply contrasting rate areas without any particularly apparent reason.

But the immediate occasion for the establishment of the commission was another aspect of the Boston gas situation.

"Frenzied finance" came up from New York to see what could be done with the conservative gas industry of Massachusetts.

In 1885 J. Edward Addicks organized the Bay State Gas Company, and secured permission from the city of Boston to lay paralleling mains to supply the newly developed water gas in competition with the old coal gas company which had been in operation for over sixty years. After a few years of riotous competition the Bay State Company secured control of the old Boston and two suburban companies, shut down their coal gas plants, and pledged the stock of all four companies with a holding company for a $10,000,000 issue of its bonds.

From the outset of this performance it was evident that the pastoral days of the gas business in Massachusetts were at an end. No company would be safe unless competition could be controlled —at least to the extent required by the public interest.

Therefore the gas industry drew up an act to vest control over competition in a permanent commission. As originally drafted the act had no other purpose, but in order to secure a limited protection against competition the industry conceded a limited control over rates.

THE act of 1885 which established the gas commission was an affair of only two pages, deceptively simple in appearance, but shrewdly designed to exert a silent pressure on rates.

Two of its sixteen sections dealt with competition. If a company was in operation anywhere within the limits of a municipality[2] no other company might enter without the permission of the municipality, granted after notice and public hearing. On appeal by the established company the commission might veto the municipality's grant.

The rate section was equally potent. The commission had jurisdiction only

[2] A geographical subdivision corresponding to the western township.

¶ "THE *gas and electric light commission of Massachusetts was established in 1885, a few years before the Supreme Court reversed itself by declaring that the reasonableness of a rate was a judicial question and more than ten years before the court foreshadowed its 'rule' by Smith* v. *Ames.*"

on petition by a municipality or twenty consumers, but on such petition, after notice and public hearing, it might order any reduction of rates or improvement of service it deemed advisable, subject only to the requirement that an account of the proceedings be included in the annual report to the legislature.[3]

Eleven other sections were concerned with the appointment of three commissioners and a clerk, with an annual budget of $10,000; and a prescription of duties which consisted principally of keeping informed as to compliance with law, and requiring companies to make annual returns in such form as might be prescribed.

The remaining two sections provided for the enforcement of all lawful orders of the commission.

First Period 1885-1906

If the legislature realized how soundly it had laid the foundation for a regulatory commission it showed no disposition for almost a decade to depart from its long-established policy of regulating by means of general law, although from time to time the powers of the commission were slightly enlarged.

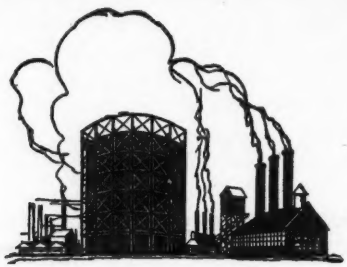
In 1886, the year after the commission was established, the legislature dealt with bond issues, moved by the spectacular financing of the Bay State Company. Gas companies were prohibited from issuing bonds at less than par, or to an amount in excess of capital actually paid in and applicable to authorized purposes; and the proceeds of bond issues were required to be applied only to specified purposes which were, essentially, the development of the company's property. In the same year the commission was given authority to order gas to be supplied to anyone within a municipality in which a company was operating, under terms and conditions that were legal and reasonable.

In 1887, when the electric industry was only a few years old, the 48 electric companies which were doing business as ordinary manufacturing corporations were placed under the jurisdiction of the commission. Three years later the statute governing bonds was made applicable to electric companies, but still without involving the commission in either stock or bond issues.

In 1891 municipalities were authorized to engage in the gas and electric business under provisions which charted broadly the course of their operations. They were required to keep accounts and make annual returns in the manner prescribed by the commission, but it was given no authority over their rates or over their operations beyond seeing that they kept within the municipal plant law. (Competition was again restrained by requiring that any municipality voting to operate its own plant must purchase any private plant within its limits at a price to be determined by the court if the owners wished to sell, as they always did.)

It was not until 1894 that the commission was brought into participation in a routine of management. The "anti-stock watering" legislation of that year limited issues of stock and bonds to such amount as the commission deemed necessary for the purpose for which they were authorized, and allowed

[3] This rate section remained in force without essential change for about forty years.



Success of Massachusetts Companies before Regulation

"WHEN regulations came into popular favor some thirty years ago the soundness of the Massachusetts companies and the established position of the commission prompted various publicists to account for the success that had been achieved, and to ascribe it to some policy or regulatory rule. But there was little agreement among the causes ascribed to the commission's success, and perhaps less agreement with the facts."

stockholders to take their proportionate share of new issues at a market value, but not less than par, determined by the commission. The old auction law was left to apply to any stock that remained unsubscribed—usually none.

By the same statute the commission was given power, in any stock or bond application, to require that a discrepancy between the outstanding capital and the "fair structural value" of the plant be made good either from earnings or by a reduction of the outstanding capital.

WITH this legislation the commission emerged, before the turn of the century, a rounded regulatory agency endowed with extraordinary powers.

Capital issues made up the bulk of its business for the next twelve years. Electric companies were developing rapidly; gas companies were strengthening their position under the stimulus of competition for the lighting business. From the date of the establishment of the commission to 1894 companies had increased their capital by only $1,500,000 under the stock-at-auction law. From 1894 to 1906 their capital was increased by $37,000,000 under commission authorizations.

This successful capital expansion is sometimes held to be evidence of accomplishment by the commission. That the financing was successful—phenomenally successful for the period—is beyond question.

Of the total of $37,000,000 only $5,000,000 or 14 per cent was realized from bonds, which were sold at par. The rest, or 86 per cent, came from common stock.

Of the $32,000,000 received from the sale of common stock, $3,000,000 represented issues of new companies sold at par, leaving $29,000,000 realized from shares of established companies. The par value of these shares was $20,000,000; the other $9,000,000 was paid by subscribers as premiums set by the commission.

But there is little to justify the claim that financial standing which commanded a premium of nearly 50 per cent was attributable to the commission, rather than to the provisions of the public utility law and to the good sense of the companies themselves—to a conservativeness which led them to keep dividend charges below earnings, to keep liabilities below assets, to finance plant extension to a considerable extent from surplus earnings.

In only a bare half-dozen cases out of more than 200 were applications for securities denied; and an examination of some that were granted shows that issues were authorized against capital accounts which had been padded, even by such obvious subterfuges as "construction companies," by from 50 to 300 per cent.

Nor is there evidence in other fields that warrants claims made for the commission of this period. From 1886 to 1906 it acted on about 40 appeals involving competition; it ordered 36 reductions in the price of gas. The average price declined from $1.72 in 1886 to 90 cents in 1906: at the rate of 5 cents a year for the first decade and a little under 2 cents in the second. But in contrast with the 36 reductions ordered by the commission there were nearly 300 voluntary reductions by the companies themselves. Clearly circumstances, probably aided by the pressure of the impending rate statute, were at work.

Moreover there is ample evidence scattered through this 20-year period that the commission's relations with the companies were intimate, but with the public both secretive and reserved.[4]

Certainly there was no doubt in the public mind at the time about the standing of the commission. It was so low that a group of public-spirited men banded together in a Public Franchise League to safeguard the public interest.[5] By an interesting coincidence the occasion for the formation of the league was a further development of the Boston gas situation which had led to the creation of the commission about twenty years before.

The operator who had raided the old Boston Company in 1885 incurred the enmity of New York financial interests who in turn raided his Bay State Company, avoiding the competition statute by buying a small suburban company which happened to have an old charter right to do business in Boston. Again paralleling mains were laid, a new gas plant was built, and in three years the Bay State was buying gas from the new company.

Then in 1896 a "pipe-line" company secured a special charter to sell in bulk gas which it obtained from a coke oven plant built and owned by an unincorporated association. This association

[4] Uniquely equipped with annual reports which showed financial and plant detail, the commission kept these reports from the public on the ground that they were not public documents, but confidential data for its own guidance.

[5] The league was made up of such names as Anderson, Brandeis, and Filene, with a young man named Eastman as secretary.

acquired the pipe line and the latest raider's properties, floated a $14,000,000 bond issue, and went into receivership.

Out of the receivership in 1902 came a new holding company which acquired the coke oven plant, the pipe line, the latest raider's properties, and the holdings of the Bay State Company (which had failed to earn interest on its holding company's $10,000,000 bond issue), and financed its acquisitions with certificates of preferred and common shares to the par value amount of $50,000,000.

IN the midst of this holding company riot an attempt was made to bring about a consolidation of all gas properties in Boston, and in 1902 a consolidation act was passed. It authorized the merger of all but the coke oven plant, and authorized a stock issue of a par value amount equivalent to the aggregate value (to be determined by the commission) of the properties to be merged.

As the commission had at the time a budget of only $17,000 it was obliged to get outside help to shape up this extra work. It chose a Massachusetts manager of demonstrated ability, but by an unfortunate accident the man fell victim to the then novel "valuation" procedure which was later to become so endemic as to pass for regulation itself.

When the league saw the meticulous listing of all the cluttered minutiae of a quarter century of hilarious competition being worked up for a subservient commission, and thought of that $50,000,000 certificate issue, it had the consolidation act amended to authorize stock to the par value amount of $15,000,000 and no more. (The commission found a value of $24,000,000.)

With an eye to a future rate base the holding company which controlled the stocks of the companies to be merged, and was to hold the stock of the consolidated company, subscribed the new issue at 160 per cent so that it would stand on the books at $15,000,000 par and $9,000,000 premium, or a total of $24,000,000.

AT this the league countered by moving to take the Boston rate out of the hands of the commission, and in 1906 had an act passed subjecting the rate of the consolidated company to an "automatic and interdependent adjustment of price of gas and rate of dividends known as the London sliding scale." [6]

At the same time that the league was having this essay at "automatic" regulation it was moving to reform the commission. Its scheme was to secure

[6] Base dividend 7 per cent, base rate 90 cents: 1 per cent increase in dividend for each 5-cent reduction in rate. This contrivance lost its "automatic adjustment" in a few years and thereafter became an increasing nuisance until it was eventually repealed.

¶ "THE *establishment of the [Massachusetts Gas and Electric Light] commission in 1885 did not mark a change either in legislative policy or practice. It was only a minor and incidental delegation of legislative power even if it did lay a sound foundation for what later developed into a regulatory commission.*"

the appointment of a man of ability and character, give him a year to learn the ropes, and then abolish the 3-man commission, leaving him in its stead.

The right man was found and appointed in 1906. He was neither a lame duck, politician, or even "one of the faithful." The limit of his public office had been mayor of a city that had so little politics that sometimes there was no opposition candidate. But he had shown ability to handle large or difficult matters in a quiet and compelling way.

With his appointment the first period of the old "gas commission" came to an end, having demonstrated that neither a soundly conceived scheme of regulation, nor favorable circumstances, nor undisturbed tenure of office can be expected of themselves to make regulation effective.

Second Period 1906-1916

It was characteristic of the new member that instead of qualifying at once for the payroll he went abroad for a summer to think over his new undertaking. He returned with several conclusions.

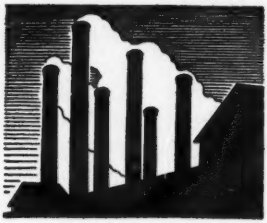
It would not be advisable to change the form of the commission. For years there had been a companies' member, a public's member, and a middle ground member regarded by the companies as "safe." It was the companies' member that had been replaced. Therefore the new member would hold the balance of power between the "safe" chairman and the "radical" representative of the public.

Moreover the other two had been on the commission for fifteen and twenty years. One was a good lawyer and accountant; the other was an old West Point engineer who had made the technology of the gas business his field. Both had grown up with the managements they were to supervise, and had a wealth of knowledge it would be a mistake to lose. Furthermore, a single head is too easily gotten rid of by some indirection.

There was an excellent public utility law, and the commission had almost unlimited power over capital, depreciation, competition, and rates. That it did not have the initiative was of no consequence; if a petition was wanted it could easily be inspired. And the absence of routine freed the commission from the burden of inconsequential detail.

If the staff was only a clerk and a couple of stenographers, that might be an advantage. The commissioners would have to get their information themselves instead of relying on such evidence as might be brought in by contesting parties, or by successive layers of subordinates with more or less knowledge of what it was all about. (Valuations or original cost proceedings were made unnecessary by the exemplary form of annual report, developed year by year, which gave financial and plant detail from the time the first dynamo was belted to its shaft.)

Finally, the Massachusetts scheme of regulation was essentially indirect. It left the commission in a supervisory position and placed responsibility squarely on management. The new member resolved to keep it so: to maintain the silent pressure on rates, to deal with individual problems as they arose; confident that if the commissioners found out for themselves what was going on they would find plenty to do



Gas Industry in Massachusetts

"In 1885 the electric industry was in its infancy, but gas companies had been in operation for over half a century, the law relating to them was already taking form, and it was evident that there was a growing consciousness that they were invested with a public interest beyond that of ordinary business. The first gas company in the state had been chartered in 1823. By 1855 there were over fifty, all established by special act."

without theorizing about regulation.

Consequently the reform of the commission was accomplished without a ripple for the public eye.

Two years later the commission was confronted with one of the early electric rate cases, brought by the Public Franchise League against the Boston Edison Company, by then a considerable $10,000,000 corporation. The commission reduced the domestic rate from 15 cents to 12 cents, ordered a schedule of open rates substituted for the then common practice of making individual contracts with large power consumers, and prohibited the likewise common practice of granting special discounts to municipal buildings where block plants could compete with established rates.

The 30-page decision in this case—the first of the commission's decisions to be printed for public distribution—contained such a fair and able discussion of problems, and took such an uncompromising stand against unethical expedients, that it established the commission in public confidence. A few years later the league retired from the field and thereafter no champion of the public's cause was needed beyond the commission itself.

If the commission had been disposed to take its work perfunctorily it would have been shorn of a large part of its indirect control over rates by a decision of the state supreme court in 1913.

A gas company had incurred a debt of $200,000 in rebuilding its plant, and had also acquired a cash surplus in excess of this amount. Instead of retiring the debt with its surplus it dissipated the cash in extra dividends aggregating 35 per cent and with empty till applied for a stock issue to retire the debt. The commission dismissed the

application, leaving the company to secure the money from the earnings of subsequent years.

The "safe" member of the commission was timid about resting the decision on a discretionary finding that the stock issue had not been "reasonably necessary," and wanted to take refuge in the claim that the extra dividend was in effect a stock dividend. He was allowed to have his way; the company appealed on a question of law; and the state supreme court made short work of the stock dividend argument. "It certainly is not in form such an issue. Nor is it in effect."

But unfortunately the brevity of the court was confined to the question at issue. In its dicta it dealt widely with the subject of regulation, *ab ovo*, and reached some remarkable conclusions. The commission was a "quasi judicial body" bound to "considerations logical to the issue." Whether or not the company could have paid for its plant out of cash surplus was "entirely immaterial" provided it had lawfully got rid of the money prior to the stock application. Moreover the large surpluses which Massachusetts companies had built up (encouraged by the commission in the belief that low capitalization would stabilize both dividends and rates) belonged exclusively to the stockholders and were something on which consumers could have no possible claim.

THIS sophomoric exposition of regulation left the commission unmoved. The legislature promptly took care of the "quasi judicial" and "considerations logical to the issue" part of the court's dicta by authorizing the commission to "take into consideration any resources of the company available, or which might have been available." And when companies quoted the dictum that surplus belonged to the stockholders, the commission replied with a smile, "Let's see them get it!"—something they never succeeded in doing during the life of the old commission.

Shortly after this venture in timidity there was a heavy attack on the commission's authority over rates.

A gas company which had built up a large surplus, and at the same time achieved a low rate, was ordered to make a reduction which would have gone below the prevailing level. It was an ideal case to appeal to the fair-return-on-fair-value formula, and the company was controlled by a powerful chain which had been planning for years to transfer regulation from state commissions to the Supreme Court. There was no doubt that the Massachusetts scheme of regulation would stand or fall by the outcome of the case.

This time there was no hesitation or half measures. Instead of engaging in the customary game of quasi judicial procedure at the public's expense, the commission set out to teach companies what happened when they kicked over the traces. Instead of resting on "fair" valuations produced by subordinate routine it undertook to demonstrate the absurdity of the claim that "fair value" was anything approaching a fact.

THANKS to its standing it could secure experts as able as the company could get. It rounded up engineers, experts, and builders who could qualify without question, who could cut the company's valuation to half or a third, and who could declare that ac-

tual costs (obtained under a cost plus percentage contract) were "absolutely absurd."

It went further. Instead of conceding good management it attacked the management of a chain which prided itself on being an exemplar, and introduced unshakable opinion that the entire amount of the ordered reduction could be saved by reductions in management expense.

The attorney general handled the case in a crusading spirit, and the legislature responded with unlimited financial support. After about a year of unexpected counter attack the chain gave thought to its reputation and sought to compromise.

But the Massachusetts commission would have none of it: The company had taken the appeal, it could drop it at any time, and until it did drop it the fight would go on. As the old West Point member declared: "We will settle this issue the way secession was settled at Appomattox. Not by a temporary compromise in the field of law, but permanently, by force of arms!"

THE company withdrew its appeal, unqualifiedly, without compromise or secret agreement, and the commission won on its first line of defense. So the Supreme Court never got the problem presented by the huge Massachusetts surpluses, or the question the commission was determined to try to a conclusion:

> Whether the policy so long pursued in this state . . . operates to confiscate a company's property because, forsooth, the return so measured may not be equivalent to a return of an arbitrary 6 per cent on a figure obtained by this theory of reproduction cost.

In view of the frequent assertion that the Massachusetts theory of regulation is "a fair return on prudent investment"—a phrase which if ever put into actual practice would lead to confusion far beyond anything caused by the Supreme Court's rule of law—it is of interest to read the statement of the commission which won the independence that that state has enjoyed ever since:

> We contend that the amount on which a fair return should be allowed is the authorizable capital stock, in view of the Massachusetts legislation under which this company has acquired its charter and exercised it for over sixty years.

Although this was probably intended to raise more questions than it answered, it at least indicates that regulation was not looked upon as any rule of thumb.

Viewed by itself this case was extravagantly expensive, but time showed that the cost was more than justified by the savings it brought. It not only freed the commission from the expense of future appeals, but from the expense

¶ "JUST *before 1875 a number of suburbs had been merged with Boston. The enlarged city was supplied by eight gas companies, each with a district defined either by charter or mutual agreement, and each with its own rate which might differ widely from that of its neighbor. In the next decade the areas between the merged communities became settled, with the result that a continuous city was divided into sharply contrasting rate areas without apparent reason.*"

of valuations in its own proceedings which would have been required if appeals had to be considered.

It did more. By demonstrating that it did not pay to fight the commission it led almost in a stride to the idea, soon to become axiomatic, that having trouble with the commission was *prima facie* evidence of defective management. And when this idea became established it relieved the commission of all the legalistic procedurism which accompanies regulation where hostility between commission and utilities is a matter of course. In Massachusetts the matter of course, so puzzling to visitors from other states, was the tacit acceptance of suggestions and recommendations of the commission.[7]

With freedom from outside interference assured, the commission rid itself of the internal nuisance of the "public utility expert"—the cause and burden of so many rate cases—by the simple expedient of telling municipal authorities that the commission had facilities for securing information which no individual, however expert, could possess.

The legislature and the commission worked hand in hand. At this period it was the legislature's claim that no requested legislation had been refused.

As might be expected, rate cases continued to be rare, but the price of gas declined from the 1906 average of 99 cents to a prewar average of 86 cents, with a low of 75 cents voluntarily set by two companies. The silent pressure of the commission's latent power had its effect.

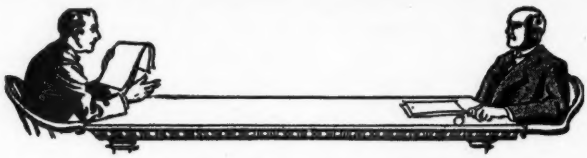
If some particularly strong company was besought by other companies, in and out of the state, not to break through the established level and set a low rate which would serve as an example, the commission waited. Issuing stock in Massachusetts was a privilege, not a right, and when stockholders of that company wanted to get out a new issue to augment their 4½ per cent return by a per cent or so through the sale of rights, the commission intimated that it would approve the application if the price were reduced first. Otherwise plant extensions could be financed entirely from earnings—a most unscientific maneuver, quite inconsistent with "sound accounting principles"!

And always in reserve was the old competition statute. Every utility knew it had no permanent rights; every utility knew what its future would be if the commission was ever moved to "encourage the entrance of a competing company."

As problems developed and multiplied it became apparent that the commission had ways of its own to change. It had relied too long on the members' ability to keep abreast of a rapidly developing technology; had delayed acquiring unbiased and competent technical advisors of its own. It tended to make gentlemen's agreements with those who were not gentlemen, at least in the commercial field. Its attitude toward the legislature was so rigidly correct, and its special reports and recommendations were so profound, objective, and dull that that body, with the friendliest intentions, often missed the point:

The only simple and lucid explanations came from the opposition.

[7] Even the rare rate decisions of the commission were issued, gently, as recommendations.



The Act of 1885

"THE act of 1885 which established the gas commission was an affair of only two pages, deceptively simple in appearance, but shrewdly designed to exert a silent pressure on rates. Two of its sixteen sections dealt with competition. If a company was in operation anywhere within the limits of a municipality no other company might enter without the permission of the municipality, granted after notice and public hearing. On appeal by the established company the commission might veto the municipality's grant."

As for lobbying for measures and appropriations, going about making speeches, getting out news releases—all the essential propaganda of the modern governmental agency—some things just were not done.

But only a few years were required to demonstrate that in some way something had to be done. Gentlemen's agreements became tentative and conditional. The old juristic method of presentation began to give way to a comparatively intelligible style. Legislation was secured to permit the commission to employ expert assistants, without regard to the civil service, for such purposes as it desired.

The End 1916-1919

THEN, just when the commission seemed about to be entering upon a period of unprecedented opportunity for creative work, it was shuffled out of existence by a series of moves as unobtrusive as the one which had brought about its reform only ten years before.

After thirty years of service the "safe" chairman died in 1914, the "new" member of 1906 was made chairman, and a prominent politician of the party temporarily in power was appointed to fill out the old chairman's unexpired term. The temporary incumbent knew nothing about regulation, and with commendable good sense asked only to be told how to vote; but even if he was no hindrance the mere fact of his appointment raised the suspicion that after a decade of freedom from politics the commission had been returned to the class of agency that is to be used for the payment of political debts.

The suspicion was substantiated about a year later when the politician was replaced by another from the opposite and, unfortunately, the prevailing party. This man did take himself seriously, with results which would have been ludicrous if they had not

been tragic for the gas commission.

There was only a grim humor in the fact that he proved a boomerang to the less commendable class of utilities which had supported his appointment. With a man on the commission whose discretion and balance nobody could trust, but who could not be excluded from proceedings, the old working relationship with both utilities and legislature was over, and with loss of confidence came the end of constructive work.

It was apparent to all that the man must be got rid of, but of course he could not be repudiated by his party. The only politically practicable remedy was reorganization.

A convenient excuse for reorganization had existed for several years. As a complement to the gas commission the state had a railroad commission which had been revamped into a relatively expensive organization just before the growing Federal concern with railroads and the prevalent bankruptcy of electric railways had left it with little to do. Combining the work of the two commissions would give the staff of the railroad commission some work; combining the two boards of commissioners would provide an unobtrusive method of eliminating embarrassing members.

Although the reorganization of the gas commission was inevitable, there was a momentary hope that it might continue its work in another guise when the governor asked the chairman if he would head the consolidated commission if allowed to carry over his staff intact. But the pressure of political claims was too strong for such a salutary arrangement, and the next day the governor asked to have the previous conversation "forgotten." It was; and when the two commissions were finally merged into the department of public utilities, the chairman of the gas commission went in temporarily as an associate commissioner to introduce the work with gas and electric utilities.

As commissions go, the board of the department of public utilities was a strong one, but the ex-chairman had fears for the ultimate fate of a body shaped by the dictates of politics. At least, he knew for a fact that one promising chapter in regulation was ending as, amid changed surroundings, he prepared the final report of the historic old gas and electric light commission. At its conclusion he wrote a "closing statement" in the manner of the old commission.

In its brief pages thirty-five years of technical progress, legislation, and regulation pass in sedate review. There is no hint of the trials of the last few years; no regret for lost opportunities. It is only in the last paragraph that the long record of the commission, beginning in nullity, rising to distinction, and brought by the exigencies of politics to a trivial end, is made to revolve on the personal factor in words perhaps too prophetic to be appreciated except in the light of years yet to come. "... The experience of the commission seems to suggest that no system for the supervision and regulation of public utilities, however wisely designed and consistently maintained, will succeed unless administered by a personnel commanding the confidence of all concerned and having a tenure of office dependent only on proved capacity."

Wire and Wireless Communication

THE nation's highest military and naval chieftains have accused the Federal Communications Commission of endangering the war effort by its radio intelligence activities. This was revealed on July 2nd by the Cox committee investigating the FCC as it opened hearings after five months of inquiry into activities of the agency.

Committee Counsel Eugene L. Garey placed in the record a letter to President Roosevelt from Secretary of War Henry L. Stimson and Secretary of the Navy Frank Knox, demanding the discontinuance by the FCC of "all military and quasi military radio intelligence activities." The request seemingly had been ignored by the President, since it was transmitted last February 8th.

Also made public was a report by the joint chiefs of staff, Admiral William D. Leahy and General George C. Marshall, that "the attempted duplication by the FCC of work that is being more effectively done by the military has in fact endangered the effectiveness and security of military radio intelligence."

Admiral Leahy, who bears the title of Chief of Staff to the Commander in Chief of the Army and Navy (the President), went to the extent of preparing an executive order stripping the FCC of its military radio intelligence functions.

THE committee's bombshell fell upon a capital dismayed by interadministration brawls. But beside this disclosure of feuding between the Army and Navy and the agency, headed by Chairman James L. Fly, which rules the air waves, the Wallace-Jones controversy becomes a back-yard squabble.

It exploded before a Congress which had been deadlocked over the discharge of three government employees accused of subversive activities, two of whom, Goodwin B. Watson and William E. Dodd, Jr., are employed in the very radio intelligence unit of the FCC under attack by the military. Subsequent to the Cox committee developments, however, the Senate and the House finally passed the urgent deficiency appropriation bill with a compromise provision by which the three employees, including Watson and Dodd, will be severed from their government jobs not later than November 15th unless President Roosevelt shall formally nominate them to continue in office, subject to confirmation by the Senate.

The joint chiefs of staff charged, in effect, that the FCC could not be trusted with secret military information acquired through its radio intelligence activities. Moreover, Counsel Garey revealed, evidence would be presented showing serious bungling by the agency in evaluation of military information which led to a "highly dangerous" incident in military operations in Alaskan waters.

In another instance, the FCC reported finding "enemy ships" in the Pacific which developed, upon investigation by the Navy, to be enemy stations in Japan.

The agency, Admiral Leahy noted, has set up "an elaborate system of its own which is engaged in (a) the location of enemy units at sea and abroad; (b) the

interception of enemy Army, Navy, and diplomatic traffic; (c) the location of clandestine stations; (d) the giving of bearing aids to lost planes; (e) the maintenance of a "marine watch at distress frequencies; and (f) the monitoring of military radio circuits."

Because the Army's present need for personnel and equipment in the field of radio intelligence is greater than that of the Navy, Admiral Leahy recommended that all of the FCC's radio intelligence facilities should be transferred to the Army entirely. The Army should decide, he said, which of the agency's civilian employees would be placed in military status, which replaced by military personnel, and which would be best retained in the Army as civilian employees.

THE letter to the President from Secretaries Stimson and Knox read to Chairman Eugene L. Cox, Democrat of Georgia, and members of the committee by Counsel Garey, gave these reasons for discontinuance of the FCC's radio intelligence:

> Since radio intelligence develops information as to the movements and dispositions of the enemy, it is essential, for reasons of coördination and security, that there be full military control.
>
> Military activities have been hampered by severe shortages of trained personnel and critical equipment essential to radio intelligence.
>
> The joint chiefs of staff have made a thorough and comprehensive study and they, as well as the responsible military commanders in the field, are of the belief that radio intelligence, the location of clandestine stations, the supervision of military communications security, and related activities must, in their very nature, be under the sole control of the military forces.

Counsel Garey made a lengthy statement to the committee, outlining the widespread accusations which have been made against the FCC and concerning which evidence is to be presented. The commission has been charged, he said, with being completely dominated by Chairman Fly and entirely motivated "by political partiality and favoritism in the performance of its duties."

Both the Secretaries of War and of Navy would be summoned before the committee, Garey announced, as well as a number of military and naval officers. Chairman Cox said he had been advised "from official sources" that some twenty military and naval officers whom the committee had requested to appear would not be permitted to testify.

"I have been informed," argued Counsel Garey, "that these officers have been silenced and gagged by higher authorities but I prefer to believe that untrue until officially advised of the fact."

The hearing was adjourned until July 9th after Chief Counsel Charles Denny of the FCC had been denied permission to make a statement. When he persisted, Cox told him sharply to sit down "or I will summon police to have you seated."

IN one of the bitterest attacks ever released to the public by a United States official, FCC Chairman Fly on July 4th accused high Army and Navy officers of participating in a plot to wreck the commission. In a 6-page broadside against the House committee under the leadership of Representative Cox, Fly charged the military with having been joined by "Cox, Wall Street interests, and the radio monopoly" in a campaign to establish "coercive surveillance" of the broadcasting industry.

Fly's inclusion of the military in his blanket blast at the Cox committee and its conduct, followers of the dispute pointed out, obviously was by way of rebuttal to the disclosures that Admiral Leahy and General George C. Marshall have recommended to the President that the FCC be stripped of its military radio intelligence functions.

Their recommendations further asked that these functions be turned over to military services.

In tracing the events which he said led to the inquiry which opened on July 2nd, Fly pictured the Georgia Congressman as an erstwhile champion of the commission up until the time "it became the unfortunate duty of the commission to report to the Attorney General that Representative Cox had procured a $2,500 fee for representing a successful ap-

plicant for a broadcast station license."

In the investigation, Fly charged, Cox has "joined forces with the radio monopoly and Wall Street interests on the one hand and the military on the other, all moving in for the kill."

Fly further charged that the congressional investigation was farcical in that on July 2nd the public became acquainted through the Cox committee's "Wall Street mouthpieces" with "the 50 vicious conclusions it is going to arrive at come hell or high water, after purporting to go through some of the forms of a judicial inquiry and due process of law."

ABOUT a page of Fly's formal statement was given over to a description of the commission's intelligence service, branded by Cox as Fly's Gestapo, which he said has done a "highly effective" job in collecting, translating, analyzing, and reporting to 200 government offices the radio propaganda of a world at war.

"The aim (of the Cox committee) has obviously been to wreck the commission," Fly charged, adding that the FCC is "the only agency representing the public in this important field." The action of the committee, he said, is geared "to set up monopolistic control by commercial interests and to establish actual and coercive surveillance" over the radio networks.

"Cox and his Wall Street mouthpiece have been slow in disclosing to the public their long-existing tie-in with the radio monopoly," the statement continued, adding "the committee . . . revealed its marriage to the broadcast trust by announcing that it plans to attack the antimonopoly regulations in chain broadcasting which the commission, under attack from the radio trust, has successfully defended . . ."

Fly flayed "the long-continued conduct of star chamber proceedings where witnesses were required to appear privately before the committee's lawyers"; "the illegal issuance of subpoenas requiring appearances . . . in the Wall Street offices of a lawyer who is contributing his services 'to the cause' at $1 a year"; and "constant efforts . . . to stir up destructive criticism of the commission."

He accused the Cox committee of "seizure of a truckload of irreplaceable commission files without opportunity for properly listing or copying them," and with fostering "vicious rumors and gossip to destroy the reputation and standing of the commission."

* * * *

CONSIDERABLE mystery surrounded President Roosevelt's action on July 1st in withdrawing the nomination of George Henry Payne for another 7-year term on the Federal Communications Commission which had been submitted to the Senate on June 30th. The White House declined to amplify its brief announcement that the nomination had been withdrawn.

Mr. Payne, a member of the FCC since its creation in 1934, was not available to newspapermen. Members of the FCC professed to have no knowledge of why the President had reversed himself. Although nominally a Republican member of the FCC, Mr. Payne had sided generally with the administration majority in recent years.

* * * *

THE Federal Communications Commission on June 30th extended until January 1, 1944, the date by which some 50 independent telephone companies must file statements of their proposed methods for keeping certain accounting records. The commission said that meanwhile it would call a conference on the order, probably in the latter part of July.

The delay was requested by the United States Independent Telephone Association and by two independent companies, the Nebraska Continental Telephone Company and the Home Telephone & Telegraph Company of Fort Wayne, Indiana.

The FCC said that the extension of time would not apply to "so-called independent telephone carriers, such as the Rochester Telephone Corporation," which had been adjudicated to be direct-

ly or indirectly controlled by a Bell system company.

In other actions on the same day, the commission extended until July 30th the effective date of an order requiring a 50-50 division of tolls for the radio portion of the cost of foreign or overseas radio communications. Hearing on this order was set for July 19th.

The FCC also authorized RCA Communications, Inc., to intervene in proceedings on the application for merger of the Western Union and Postal Telegraph companies.

* * * *

STOCKHOLDERS of the Keystone Telephone Company last month approved the terms of a proposed merger with the Bell Telephone Company of Pennsylvania. The stockholders signified their agreement at a meeting on June 22nd in an 18,613-to-652 vote.

Under the proposed merger, Bell will take over all Keystone properties. Holders of Keystone $3 preference stock would receive about $57 per share and holders of the $4 preference stock would get $76 per share.

* * * *

THE New York Telephone Company recently said the transactions which the Federal Communications Commission had described on June 23rd as "inflationary write-ups" were "made at prices which were fair and reasonable and the accounting was in strict accord with the Interstate Commerce Commission's system of accounts."

The telephone company said exceptions to the proposed report of the FCC would be filed and a request made for oral argument before the commission. The FCC report would become final in twenty days if no objection were filed.

The FCC said it tentatively had decided to require New York Telephone to eliminate from its valuation $4,166,510 based on transactions with its parent, American Telephone and Telegraph. The company asserted:

The value of the property in question was passed upon by a Federal statutory court in New York in 1929 when the court included this property, at prices paid for it, in its valuation for rate-making purposes of the company's plant.

On January 1, 1937, the Federal Communications Commission substituted its own accounting system for that of the Interstate Commerce Commission's and included provision for original cost accounting for purchases of certain utility property.

The proposed report apparently is based upon the FCC's original cost theories.

The FCC report was made after investigations by the FCC and the New York State Public Service Commission.

* * * *

MERGER of the Southwestern States Telephone Company and the Louisiana Telephone Company was announced by Vice President D. T. Strickland of Southwestern after a conference with the Arkansas Department of Public Utilities last month.

Although Southwestern's principal operations are in Texas, it has exchanges at Cabot, Jacksonville, Ward, Judsonia, and Kensett. The Louisiana firm operates 14 small exchanges in north Louisiana.

The commission scheduled a hearing for June 28th on Southwestern's application for authority to refund $1,700,000 of 6 per cent first mortgage bonds at 4¼ per cent interest; to refund $500,000 of 6 per cent sinking-fund debentures at 4½ per cent; and to issue 49,976 shares of common of $1 par value each.

* * * *

THE agreement recently entered into for purchase of the Postal Telegraph Company by the Western Union Telegraph Company has been amended to cover additional liabilities imposed by the War Labor Board's award of wage increases to Postal workers, it was announced last month.

In a joint statement, Albert N. Williams, Western Union president, and William J. Deegan, head of Postal, said the original agreement imposed a maximum limit upon the liabilities Western Union would assume in purchasing Postal, which now might be upset by the additional operating charges involved.

Financial News and Comment

By OWEN ELY

Many Utility Refunding Issues "On the Fire"

While utility financing this year has remained at a very low level, a number of issues are now filed with the SEC, or in preparation for filing. If there is no hitch in the proceedings there should be a fairly heavy volume of financing in late August or September.

California Electric Power early in July registered with the SEC $16,000,000 first 3¾s, due 1968, and 40,000 shares of $5.50 convertible prior preferred stock. The principal underwriter for the bonds is Dillon, Read & Co., and for the preferred stock Stone & Webster and Blodgett, Inc., and Bosworth, Chanute, Loughridge & Co. The reason there was no competitive bidding on this issue was apparently that Dillon, Read & Co. responded to the company's publicized request for advice on a financial program.

Community Power & Light on June 29th registered $6,850,000 first 3⅜ per cent bonds due 1973. Central Republic Company of Chicago is to be the principal underwriter. (Absence of competitive bidding is not explained.)

Delaware Power & Light's refunding issue of $15,000,000 30-year first and collateral bonds (together with $4,000,000 preferred stock) is before the SEC for approval, as corollary to the general plan of UGI and Associated Gas for exchange of properties, etc. Hearings were held before the SEC in May but were delayed about a month by the request of the Delmarva Electric Coöperative for a 90-day recess. The latter was denied by the commission, but it has not yet passed on the plan itself. Delaware Power & Light (controlled by UGI) is to be merged with Eastern Shore Public Service which will be taken over from General Gas & Electric Corporation (Associated Gas system).

Electric Power & Light on June 28th filed a declaration with the SEC covering readjustments to be made to permit *Idaho Power Company* to take care of a write-off ordered by the Federal Power Commission. The number of shares will be reduced from 150,000 to 90,000 shares (in connection with the write-off), and then split five for one, after which the entire amount will be sold "subject to satisfactory market conditions." A report in May indicated that Blyth & Co. had formed a group to bid for the stock, but it seems possible that the issue will be open for competitive bidding.

Iowa Power & Light on May 13th filed with the SEC $17,000,000 first 3¼s, due 1973, to be sold at competitive bidding. Hearings have been held but owing to the complicated character of the plan (of which the refunding operation is part) some weeks may elapse before the issue is ready for bids.

Laclede Gas on June 15th revised its program, proposing to issue $19,000,000 first 20-year 3¼s (instead of $20,000,000 3½s). The debentures will be 3½s instead of 5½s and the amount is reduced from $5,000,000 to $3,000,000. Hearings are being held before the Missouri Public Service Commission on the changes, and SEC approval will also have to be awaited. The financing does not appear imminent.

Niagara Hudson Power, in its plan of reorganization, proposes eventually to refund the following issues on about a 3 per cent basis, presumably with one big new issue:

$17,029,000	Buffalo, Niagara Elec. Ref. 3½s, 1967
2,375,000	Buffalo, Niagara Elec. Ref. 3½s, 1968
20,000,000	Buffalo General Electric Ref. 4½s, 1981
18,750,000	Niagara Lockport & Ontario Power 5s, 1955
2,058,000	Salmon River Power First 5s, 1952
2,461,500	Western New York Utilities First 5s, 1946
25,293,000	Niagara Falls Power Ref. 3½s, 1966
48,364,000	Central New York Power Gen. 3¾s, 1962
5,000,000	Central New York Power Gen. 3½s, 1965
1,000,000	Central New York Power Gen. 2¾s, 1965
66,582,000	New York Power & Light First 3¾s, 1964
$208,912,500	

Since a great deal of spade work must be done on the plan before various commissions, Federal courts, etc., it seems unlikely that the refunding program can be carried out until 1944.

NORTHERN *Indiana Public Service's* $45,000,000 refunding 3¼s (or less) due 1973 were filed with the SEC June 28th. It is reported that two groups have been formed to bid for the bonds, although it is understood the company has asked for an exemption from competitive bidding.

Public Service of Oklahoma (Middle West system) proposes to issue $6,600,000 additional first 3¼s, due 1971, to provide funds to redeem bonds of Northwestern Light, which is to be merged with Oklahoma.

South Carolina Electric & Gas (General Gas & Electric) is being merged with Lexington Water Power and will issue $20,000,000 first mortgage 30-year refunding bonds.

Thus there is about $146,000,000 refunding financing in prospect for the fall (together with possible sale of the Idaho Power stock), and in the somewhat more distant future the $208,000,000 Niagara program. Probably much refunding could have been handled sooner except for the troublesome questions which usually arise regarding treatment of plant accounts 100.5 and 107, which have to be threshed out with the SEC and the FPC; *i.e.*, the "modern" problem of "aboriginal" cost.

Electric Power & Light Company

(Tenth in a series of articles on holding companies.)

ELECTRIC Power & Light, $767,000,000 subholding company of the Electric Bond and Share system, controls ten subsidiaries located principally in the South. The amounts received from these subsidiaries, plus the undistributed earnings, are indicated in the accompanying table (millions of dollars):

	Div. or Int. Received by Elec. P. & L.	*Equity in Undistr. Earnings*	*Receipts Plus Equity*
Arkansas P. & L. Company	$ .2	$ .2	$ .4
Dallas P. & L. Company	.9	.1	1.0
Dallas Ry. & Term. Company	.1	..	.1
Idaho Power Company	.7	.2	.9
Louisiana P. & L. Company	.6	.3	.9
Mississippi P. & L. Company	..	.1	.1
New Orleans Pub. Service Inc.	1.1	.8	1.9
Northern Texas Company	..	..	..
Utah P. & L. Company	..	.1	.1
United Gas Corporation	..	4.8	4.8
	$3.6	$6.6	$10.2

Of the total income obtained in 1942 from subsidiaries, a negligible amount was interest, about $350,000 preferred dividends, and the balance of approximately $3,400,000 common dividends. However, the entire 1942 "equity" earnings of United Gas (about $4,800,000) represented a claim on second preferred dividends (disregarding the extra payments made to the first preferred against arrears). In effect, however, this may be considered common stock earnings since

it appears likely that the second preferred will eventually be converted into an equity issue. Electric Power & Light owns the entire issue of second preferred, but only 48.5 per cent of United Gas common.

ONE of the principal problems faced by Electric Power & Light officials is the job of streamlining United Gas. A program for refinancing that company was presented to the SEC on May 5, 1941, and proceedings were extended to include questions relating to possible subordination of the United Gas debt to Electric Bond, relations with Electric Power, etc. A compromise between the viewpoint of the SEC and that of the management was reported close to completion in February, 1942 (after the SEC had initially rejected the plan), but final consummation was prevented by a protest registered by an Electric Bond and Share stockholder, it is understood. The SEC has not yet rendered a formal decision, but it appears likely that some action may be forthcoming within a few weeks or months.

Another important system problem is the refinancing of Utah Power & Light. That company and its subsidiary have $44,000,000 bonds maturing in 1944, and it has filed an application with the SEC for approval of an issue of $37,000,000 first mortgage bonds and $7,000,000 general mortgage bonds. There would also be a merger of Utah Power & Light and its two subsidiaries, Utah Light & Traction and Western Colorado Power. The problem is complicated by the fact that the Federal Power Commission desires to make a very substantial write-off, which (if put into effect) would increase the ratio of debt to property account to a very high percentage. The FPC has been collaborating with the state commission in Utah, with the apparent object of establishing "aboriginal cost" as the rate base and effecting a substantial cut in rates. The company has requested the SEC to act first on the proposed financing, because of the limited time before maturity of the bonds, postponing the investigation of the write-off.

ARKANSAS Power & Light Company was recently ordered by the FPC to show cause why it should not dispose of over $17,000,000 in write-offs and other excess over original cost. The commission stated that failure of the company to support its responsibilities by specific facts might result in the entry of a final order without hearings, directing the adjustment of accounts in accordance with recommendations of the commission's staff.

Electric Power & Light has the following capitalization:

Debenture 5s due 2030 .	$29,773,000	
$7 preferred stock	515,135	shares
$6 preferred stock	255,431	"
$7 second preferred stock	74,814	"
Common stock	3,454,689	"
Option warrants (to purchase stock at $25)	537,254	

Warrants can be exercised in combination with the second preferred stock, one share of which will be accepted by the company in lieu of $100 cash, in combination with four warrants. Thus the price of the second preferred, plus the price of four warrants, should approximate at least four times the price of the common stock.

EARNINGS and dividends on the $7 preferred stock in recent years have been as follows:

	Consolidated Earnings	*Parent Co. Only*	*Div. Paid $7 Pfd.**
1942	$10.69	$2.02	$1.05**
1941	10.35	1.95	1.05
1940	8.14	1.69	.35
1939	5.83	.93	..
1938	6.08	.37	..
1937	12.64	..	..
1936	10.07	..	..
1935	1.22	D.25	..

* Arrears amount to about $70.
** Paid in first half; nothing paid since.

Electric Power & Light securities have enjoyed a substantial advance in the past year, as indicated by the present quotations, compared with last year's low prices. Current market interest has probably been stimulated by hopes that a new plan might be forthcoming to settle the

triangular relations between United Gas, Electric Power, and Electric Bond, thus permitting Electric Power to draw substantial income from its investment in United.

	Recent Price	*1942 Low*
Debenture 5s—2030	98	68½
$7 second preferred	31	2¾
$6 preferred	60	15
$7 preferred	67	17½
Common	6	¾
Warrants	1½	5/64

Niagara Hudson Plan of Reorganization and Dissolution

THE plan of reorganization of the Niagara Hudson system, dated June 24th, consists of five stages: (1) the consolidation of the principal system operating companies into Niagara Falls Power Company, the name of which will be changed to Niagara Hudson Company, Inc.; (2) acquisition of certain smaller companies and miscellaneous assets by Niagara Hudson Company from Niagara Hudson Power Corporation (present top holding company); (3) consolidation of Frontier Corporation and Northern Development Corporation (retaining the latter name, and acquiring certain assets of Niagara Hudson); (4) the dissolution of Niagara Hudson Power and distribution of its assets to stockholders; and (5) a general refunding of the principal system bond issues.

The plan presents *pro forma* consolidated balance sheet and income statements (calendar year 1942), giving effect to the proposed bond refunding. The new $5 preferred stock has an over-all dividend coverage of 1.63, which is similar to that of Consolidated Edison preferred, currently selling at 102½. If the plan is consummated and the stock becomes "seasoned" marketwise, a price of 102 would seem reasonable.

THE new common stock earned $1.61 for 1942 and a price-earnings multiple of 14 would seem reasonable under present market conditions (making allowance for improved earnings

POTENTIAL REORGANIZATION VALUES COMPARED WITH MARKET PRICES

	Received in Plan of Reorganization	*Est. Value Received*	*Tot. Est. Value Received*	*Present Price of Old Sec.*	*Ratio Price to Est. Value Received*
Buffalo, Niagara & Eastern 1st $5 pfd. ...	1 sh. oper. co. pfd. ..	$102	$107	95	89%
	Cash (arrears)	5			
Buffalo, Niagara & Eastern 2nd $1.60 pfd.	1 sh. oper. co. com. ..	22	24	15½	65
	Cash (arrears)	2			
Central New York Power pfd.	1 sh. oper. co. pfd. ..	102	102	95	93
New York Power & Light $7 pfd.	1.15 sh. oper. co. pfd.	118	118	112	95
New York Power & Light $6 pfd.	1.05 sh. oper. co. pfd.	107	107	101	95
Niagara Hudson Power 1st $5 pfd.	½ sh. oper. co. pfd. .	51	110	83	76
	1 sh. oper. co. com. ..	22			
	1 sh. Cent. Hud. G. & E.	10			
	½ sh. Cons. Edison ..	11			
	Cash	11			
	Div. arrears	5			
Niagara Hudson Power 2nd $5 pfd.	4½ sh. oper. co. com.	92	111	70	63
	½ sh. Central Hudson	5			
	Cash	9			
	Dividend arrears	5			
Niagara Hudson Power common	⅛ sh. oper. co. com. .	4½	5	3	60
	1/10 sh. Nor. Dev. .	½			

since 1942), on which basis the new stock would be worth about 22. The values thus arrived at for preferred and common stock of the new operating company are applied in the table on page 103.

It is very difficult to hazard a forecast as to the market value of the smaller surviving company, Northern Development Corporation, since the largest asset is the book value of land, undeveloped water rights, etc., amounting to $14,658,875. Remaining assets (largely cash and securities) have a net assigned value of about $1,770,000, after deducting liabilities. Book value of the common stock is about $17, but in the table we have assigned a potential market value of only 5, since a relatively small part of the assets are income producing. (No *pro forma* income figures are published.)

The management estimates that some $209,000,000 of system bonds can probably be refunded on a 3 per cent basis, following completion of the merger. This would result in savings in interest and amortization of over $2,000,000 but unfortunately a large proportion of this is absorbed in increased excess profits taxes, so that the estimated increase in net income works out at less than $400,000, a relatively small amount.

THE Niagara Hudson management will have to obtain "clearance" from three commissions and probably one or more Federal courts, because of various issues now pending regarding the Niagara Falls Power Company write-off.

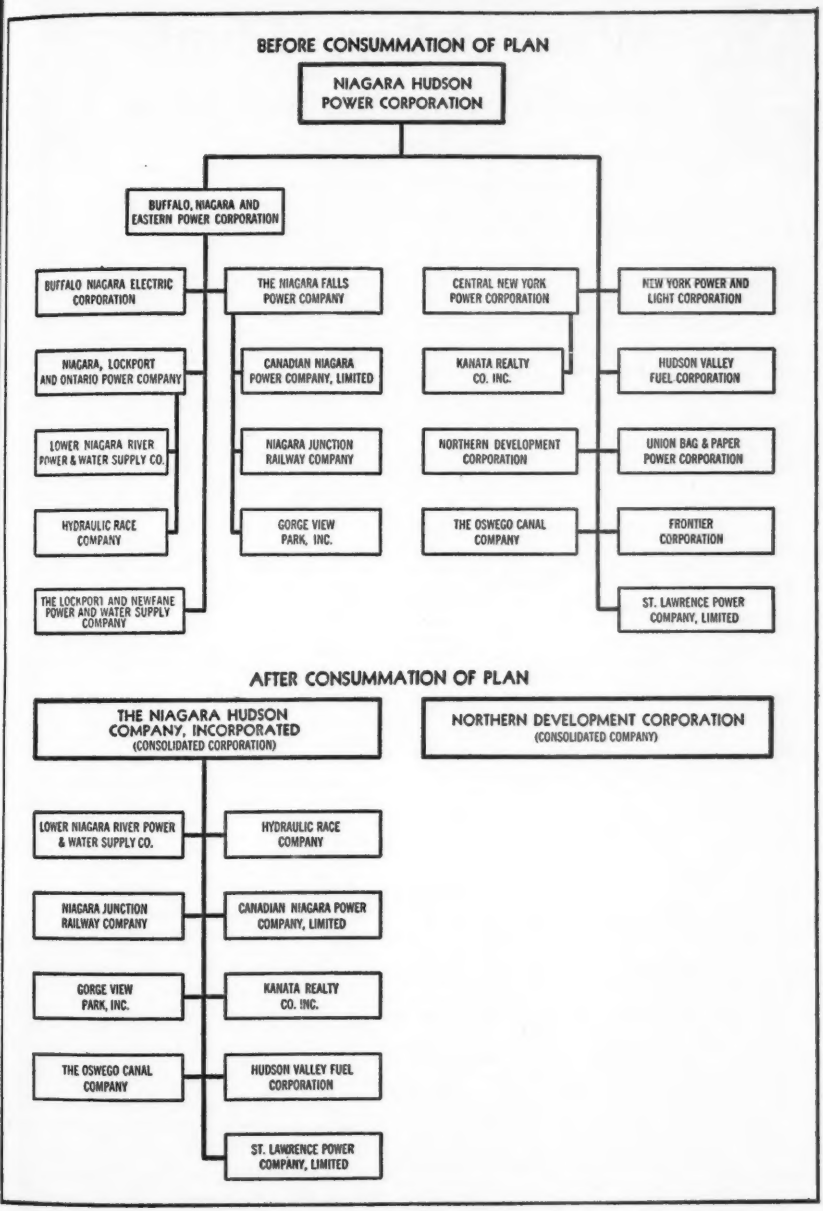
In addition, it has just announced that it would ask the supreme court to invalidate some New York state legislation, effective July 1st, which permits the state to collect an additional assessment for water diverted from Niagara Falls, estimated at $1,500,000 per annum —equivalent to about 31 cents a share on the new common stock. (This possible loss of earning power was not taken into account in estimating the value of the common stock above, as it may be substantially offset by the current increase in earnings as compared with last year.) Due to the complicated problems involved, it may be a year or more before the plan can be consummated.

The SEC Report to Congress

THE eighth annual report of the SEC to Congress (published in inexpensive form) was submitted on June 9th. The section relating to the Holding Company Act comprised only ten pages (19-26 and 38-39) plus some statistical information in the appendices. With regard to enforcement of § 11 the commission stated that "in several important cases we have entered orders describing most of the action which must be taken ultimately . . . as to the remaining cases a majority of the proceedings have reached the stage where such orders may be expected in the near future . . . a number of companies have appealed our orders to the courts and the cases now pending in the courts should settle most of the legal questions still in dispute." The report also includes the following interesting statistics:

During the 1942 fiscal year, the commission instituted 26 new proceedings looking to orders requiring registered public utility holding companies to comply with § 11, and at the close of the fiscal year 48 such proceedings were pending. These 48 proceedings involve substantially all of the public utility holding company systems registered under the act although they do not include all of the § 11 problems existing in such systems.

AS of June 30, 1942, there were registered with the commission 134 public utility holding companies, the total consolidated book assets of which amounted to approximately $16,000,000,000, or about 68 per cent of the private electric and gas utility industry of the United States. Those 134 registered holding companies constituted 53 public utility holding company systems and included 1,342 holding, subholding, and operating companies. Consolidated assets of $12,195,000,000 were controlled by about fourteen systems.


BEFORE CONSUMMATION OF PLAN
NIAGARA HUDSON POWER CORPORATION
BUFFALO, NIAGARA AND EASTERN POWER CORPORATION
BUFFALO NIAGARA ELECTRIC CORPORATION
THE NIAGARA FALLS POWER COMPANY
CENTRAL NEW YORK POWER CORPORATION
NEW YORK POWER AND LIGHT CORPORATION
NIAGARA, LOCKPORT AND ONTARIO POWER COMPANY
CANADIAN NIAGARA POWER COMPANY, LIMITED
KANATA REALTY CO. INC.
HUDSON VALLEY FUEL CORPORATION
LOWER NIAGARA RIVER POWER & WATER SUPPLY CO.
NIAGARA JUNCTION RAILWAY COMPANY
NORTHERN DEVELOPMENT CORPORATION
UNION BAG & PAPER POWER CORPORATION
HYDRAULIC RACE COMPANY
GORGE VIEW PARK, INC.
THE OSWEGO CANAL COMPANY
FRONTIER CORPORATION
THE LOCKPORT AND NEWFANE POWER AND WATER SUPPLY COMPANY
ST. LAWRENCE POWER COMPANY, LIMITED
AFTER CONSUMMATION OF PLAN
THE NIAGARA HUDSON COMPANY, INCORPORATED
(CONSOLIDATED CORPORATION)
NORTHERN DEVELOPMENT CORPORATION
(CONSOLIDATED COMPANY)
LOWER NIAGARA RIVER POWER & WATER SUPPLY CO.
HYDRAULIC RACE COMPANY
NIAGARA JUNCTION RAILWAY COMPANY
CANADIAN NIAGARA POWER COMPANY, LIMITED
GORGE VIEW PARK, INC.
KANATA REALTY CO. INC.
THE OSWEGO CANAL COMPANY
HUDSON VALLEY FUEL CORPORATION
ST. LAWRENCE POWER COMPANY, LIMITED

What Others Think

Utility Executives Discuss Inflation And Postwar Planning

SOMETHING is going to happen to this country if we don't watch out. This something may be totalitarianism, which we are now fighting, in the opinion of S. R. Inch of New York, president of E-basco Services, Inc., in a recent interview published in the Portland *Oregonian*. This organization is interested in public utilities in 30 states, and Inch is making a nation-wide tour to see how the companies are doing, what businessmen are thinking. Replying to a direct question, Mr. Inch said:

> I certainly fear inflation. I also fear those tremendous amounts of money the government has spent in building plants for the many defense industries. When the war is over the government will be the owner of $25,000,000,000 worth of plants that it may find difficult or impossible or undesirable to turn back to private enterprise.
>
> Probably there will be the urge for the government to go into industry to compete with private enterprise in a vast number of things. The electric power business is less likely to be taken over by the government than other enterprises, in my opinion. Today one-sixth of the money invested in the electric power industry is government money, but these Federal plants are producing only one-eighth of the power that is used.
>
> In other industries the government has much larger interests. Take the aluminum industry; roughly, I understand, the output of aluminum is seven times what it was immediately before the war, and the excess is almost entirely government owned. In almost every other large industry the government predominates. And so I am wondering. The electric business is minor to the great problem of who is going to run what when the war is over. Is the government going to run the tremendous number of plants it now owns? If it does so, these plants will be operated tax free.
>
> Now, if the government is going to own and operate its plants, I would think we are well on our way to state socialism which I don't believe in. If businessmen can't take this thing up for comprehensive consideration, and if we can't work together for the benefit of the country instead of for private gain, then the totalitarianism we are fighting abroad is likely to be adopted at home.

ON the allied subject of postwar planning, another utility executive, C. Hamilton Moses, president of Arkansas Power & Light Company, made some interesting comments in connection with the recent organization of the Arkansas Economic Council. Mr. Moses was elected president of this organization on June 11th at a meeting held in Little Rock, Arkansas. The purpose of the group is to formulate a definite postwar program for the state. The meeting was attended by forty-one business and industrial leaders. Mr. Moses made the following statement:

> The purpose of the organization is to formulate postwar plans that will avoid as much as possible a dislocation and serious consequences that would naturally follow the end of the war. The council expects to appraise the war industries, deciding on those that can be kept in the war business; those that can be converted into peace-time production and those formerly in production of civilian goods that can be converted back into such production.
>
> Some 10,000,000 soldiers will be returning to this country when the war ends and 20,000,000 men now employed in war industries will have to have other work, and either the government or private enterprise must supply their jobs for them. We want to formulate plans that will create more jobs, getting private industry ready immediately to work on taking care of civil demands. Private enterprise is essential to preserve our freedom and our way of life, and private enterprise should formulate these plans.

Following the organization meeting, members attended an open meeting of the Little Rock Chamber of Commerce at the Hotel Marion. Mr. Moses outlined the general purpose of the organization. He asserted:

WHAT OTHERS THINK

Private enterprise is going to have the greatest opportunity of its life in the postwar period. There will be a pent-up demand of $25,000,000,000 for consumer goods. Private debts have been reduced and the public generally has more money than ever before. Private individuals will own $25,000,000,000 worth of war bonds, and bank deposits of the nation will exceed $135,000,000,000.

During the last five years Arkansas has reduced its debt $27,000,000. Bank deposits have increased from $190,000,000 to $400,000,000 in the past three years.

We cannot postpone fighting for the American way. I want to appeal to the industrial manhood of this nation to assert its leadership of our free institutions in this hour of trial—not as critics but as men of vision and courage who have a program that leads forward rather than joining complainers.

A recent poll of America's leadership disclosed that 90 per cent of America's businessmen think that industry should work together and assume responsibility of eliminating the unemployment after the war rather than requiring these men to depend on the government. You cannot make free enterprise secure just by hoping.

MR. MOSES used two large "Postwar Balance Sheets" of Arkansas to list the assets and liabilities of Arkansas. He listed as postwar liabilities the defeatist attitude, delay in reconversion of war industries, the national debt at a record peak, lack of vision and courage, and uncontrolled planning. The total of these liabilities is a threat of regimentation and socialization.

On the "assets" poster, he listed the state's war industries, the industries established before the war, the native labor supply, adequate resources, reduced private, state, and local debts, the accumulated purchasing power in the bank deposits and war bonds, successful "know how" management, science and chemurgy, sound planning, and deferred public works.

REA under Attack for Making Loans for Other Than Rural Electrification

WITH appropriations for the Rural Electrification Administration for the new fiscal year totaling $22,258,000, and including $20,000,000 for loans, as against the $30,000,000 sought for loans by the agency, some interesting side lights have been developed on the activities of REA with respect to its alleged departure from the purposes for which the administration was set up.

In hearings before the subcommittee of the Senate Appropriations Committee, Senator Clyde M. Reed of Kansas brought out through examination of Administrator Harry Slattery and Deputy Administrator Vincent D. Nicholson that the Arkansas-Louisiana transmission line from Grand river to Lake Catherine was built with REA funds, totaling some $3,900,000, for the purpose of producing aluminum at the Lake Catherine plant in Arkansas.

It was developed at the hearing that the 194-mile, 32,500-kilowatt line was built at REA expense at the request of other war agencies. Under constant hammering by Senator Reed, it was shown that actually no service is being rendered to rural users and that the entire amount of power transmitted is being used at the aluminum plant. At one point Senator Reed commented: "Where in the remotest degree can you hook that into any rural project that justifies anything like an expenditure of that kind?"

MR. SLATTERY replied that many cooperatives in the region would be hooked on after the war. Slattery and Nicholson insisted that the line would be justified during peace time for rural connections. Both hesitated to reply to a request for a figure which would show how many farmers could be served with the 32,500-kilowatts, the inference being that the number was greater than all the farmers in the surrounding areas. Later the REA officials prepared for the record figures showing that the line would accommodate 97,500 customers on an

average basis of 100 kilowatt hours per month.

Senator Reed demanded that REA get an opinion from the Comptroller General as to whether construction of the Arkansas-Louisiana line is within the scope of the REA statute. He contended that REA had misused funds appropriated to it and that if construction of the line was necessary, it should have been done with Reconstruction Finance Corporation funds loaned to the Defense Plant Corporation, which owns the plant.

Replying to a question from Senator Hayden of Arizona, as to whether the REA co-ops would be willing to sell to the Defense Plant Corporation now if an offer were made, so as to transfer the expense from REA funds, Mr. Nicholson said: "The coöperatives wanted this line and, if it was going to be built, they wanted to build it and own it for their own future purposes.

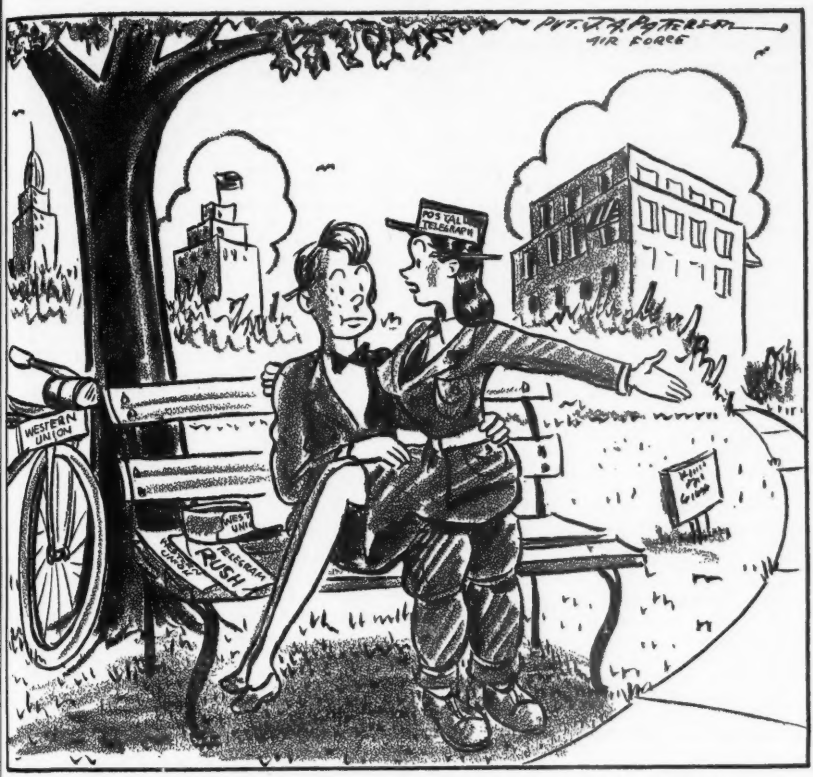
"The line was designed immediately for war purposes, but only a portion of the cost of this line can be properly charged, I think, to the war effort. These coöperatives want this line and propose to use it ultimately for their own business when the war is over."

DECLARING he had assisted in gathering the data which was made a basis for a Senate resolution for an investigation of the power holding companies, Senator Reed continued:

> I worked on this thing when I was governor of Kansas and we passed every state statute that a state could pass, if not to put them (holding companies) out of business, at least to protect our state interests within our right to do so.
>
> I have a long record on this thing. I am not an advocate of public power; on the other hand, I am not opposed to it. It is a question to be settled according to sound economics and to the best interests of the people as a whole.
>
> I think it is an absolute perversion of the philosophy of the REA for you to divert its funds to be used for a purpose like this that has even no remote justification for an expenditure of this particular class of funds.
>
> If Mr. (Jesse) Jones wanted to build that line he has financed so many plants out of the Defense Plant Corporation, he certainly should have financed this one and you gentlemen should have given your expert assistance if you had it available.
>
> That would have been your duty to do that, but you used the funds which this Congress appropriated for an entirely different purpose, which is quite another thing.
>
> I would like to have this record show the coöperatives that have been used to supply this plant; in others words, the coöperatives here that are joined here that purchase power and transmit it over this transmission line and then sell it to the aluminum plant; the capital stock, or at least the number of shares of stock in each coöperative; and the number of members each coöperative has; and the number of farmers.
>
> I presume you make these studies, and surely before you used $3,900,000 to build a transmission line you would make some study to find out what possible future market there was for power.

MR. SLATTERY submitted figures in connection with the request of Senator Reed showing that there were ten coöperatives constituting the membership of the Arkansas-Louisiana Central Coöperative. They have received $4,384,500 in Rural Electrification loan allotments. Total miles constructed or to be constructed under loan contracts amounted to 4,588. Total customers provided for by such loans were 15,463. While it was not made entirely clear as to the relationship between the coöperatives and the new Arkansas-Louisiana 32,500-kilowatt line, it was indicated that the 15,463 customers served by the coöperatives received their service from other sources than the new line and that the new line would provide for service to an additional 97,500 customers, which appears to be far beyond the number of farmers in a wide surrounding area.

In attempting to determine the basis upon which the REA had requested $30,000,000 for loans for the fiscal year 1943-44, in the hearings on the REA appropriations before the House committee, it was developed that only about $3,000,000 or $4,000,000 had been expended during the fiscal year just ended, and that there was about $76,000,000 still available for use. At best, taking into account War Production Board restrictions and other limitations, only about $16,000,000 can be loaned in this new fiscal year, indicat-



"WHAT'S ALL THIS TALK ABOUT A TELEGRAPH MERGER?"

ing that the $20,000,000 allowed for loans is adequate and that the $30,000,000 requested was excessive.

DURING the hearings and in debate in Congress it was revealed that the REA was picking up or making plans to purchase many rural electric lines owned by private utility companies which were forced on the market by the Securities and Exchange Commission in putting into effect the death sentence clause under § 11 of the Holding Company Act. The REA officials said in addition that in many instances it was necessary to buy up existing rural lines from private owners so that they could be integrated and expanded with the REA electrification program in that particular region.

—C. A. E.

Bright Future for Natural Gas Industry Predicted Despite Regulatory Restraints

UNLESS the government is willing to moderate its present point of view in respect to natural gas pipe-line companies, the time will come when it will have to assume the burden of a good portion of the financing. This is the opinion

of Paul B. Coffman, vice president of Standard & Poor's Corporation of New York, expressed in an address recently before the American Gas Association natural gas meeting in Cincinnati, Ohio.

Mr. Coffman expressed the belief that if such a result is not sought by the government, it will have to alter and moderate many of its present regulatory tendencies and philosophies. He continued:

> In the last few years there has also been considerable evidence to indicate that many people believe that somewhere along the route there will come a time when all public utility plants will be owned by the customers. That is, the present owners through depreciation would presumably recoup their investment and the plant would then belong to the customers. The management would continue as hired help, assuming of course that they did not get sick of the whole business and say "the hell with it!" and the investor would no longer have any place in the picture. Just how the investor gets out on any other basis than a squeeze out, I do not know, for in addition to a little income which he expected—but in many instances hasn't received—he also invested his money upon the basis that he would have some assurance of security of principal, plus the right which owners of all other classes of property have to the increase in value which comes from "shell-in" management, soundness of enterprise, and other causes of appreciation in values. On an occasion I was told that if a security holder's investment in a natural gas pipe-line company did not work out, that investor would have to do what he did in 1929—just write it off as an error in judgment on the theory that the customer should not be forced to pay for these errors. Maybe this theory is right, but I cannot get around the fact that it was the investor's dollars, not the customer's or the government's, which financed all of these enterprises and made as much service available as presently exists.

Mr. Coffman noted the increasing cost of the war effort and said a study of eight natural gas pipe-line companies, upon which 1942 data were available, indicates they increased their total operating revenues a little over 125 per cent between 1935 and 1942, while in the same period taxes have increased over 800 per cent. Moreover, total operating revenue increased only about 28 per cent during the war period of 1940 to 1942; but in the same time taxes have increased 111 per cent. Explaining, Mr. Coffman said:

> This inescapable fact is going to create a difficult situation for the natural gas companies, because in several recent decisions the Federal Power Commission made no allowance for increased taxation or costs because it argued that increases in gas revenues would serve as an offsetting factor. As a matter of fact, the language of at least one of the opinions would indicate that it did not make any difference whether the increased tax was offset or not. The commission stated that it took "judicial notice of the fact that our country is waging a war for survival." It also said, "increased tax burdens must be borne by the utility which enjoys a monopolistic position in the economic field, as well as by others who have no such advantage." And, finally, it concluded that "a utility should not be permitted to thwart the purpose and spirit of the war price-control legislation and the revenue laws by passing such abnormal tax requirements along to its customers as an operating expense to be collected in increased rates," and that "the basis presented in the 1940 Revenue Act establishes the highest possible level of Federal taxes which may be allowed as an operating expense for such purpose." I have read these opinions several times and I have come to the conclusion that in some of their aspects the commission was unduly influenced by the activities of other governmental agencies which are dealing solely with nonregulated companies.

THE speaker tied the future of the natural gas industry with general industrial, commercial, and domestic consumption, in view of the fact that the increased use of gas is based upon the relative prosperity of industry. Total production had reached a peak of 2,500,000,000,000 cubic feet in 1937, but production fell off in 1938 in line with the recession in general business. In the following years, the speaker continued, it increased until at the present time it is estimated that the production of marketed gas because of the war demand is running in excess of 3,000,000,000,000 cubic feet on an annual basis, the highest figure on record and a figure that could have been higher had it not been for the limitations placed upon expansion by the present shortage of critical materials.

He reported that an analysis shows that approximately 25 per cent of present deliveries of natural gas and 15 per cent of manufactured gas are being used by war industries. This increase in con-

"MOM, YOU KNOW THE GOVERNMENT WANTS US TO CONSERVE GAS"

sumption prompted orders from the War Production Board limiting certain uses of gas in many areas.

Mr. Coffman quoted figures of the American Gas Association showing that there were 19,249,000 customers connected to the mains of the industry at the end of 1942—the largest number ever connected. Of this number, 8,516,000 were served by natural gas companies. Revenues for the entire industry aggregated $995,045,000, of which $584,533,000 was grossed by natural gas companies. He continued:

Unfortunately, the natural gas industry, particularly in so far as it is typified by long-distance pipe lines, did not originate until 1926, which was just about the time when the great wave of speculation was developing which was to culminate in the stock market debacle of 1929. Since prior to 1926 pipe lines had run only comparatively short distances, and since a number of small or local natural gas companies in years past had not been successful, with a resultant loss to their security holders, it was only natural that an investor had to be gifted with exceptional imagination before he would invest money to finance a proposed pipe line which was to stretch 1,000 miles or more. Furthermore, a long-distance pipe line was not justified unless both a market and a supply of gas were assured. These two factors—coupled with the further facts that much of the gas was released in the production of oil, the construction of long-distance pipe lines requires enormous sums of money, and their successful operation depends on efficient management—explain why large oil companies and gas distribution companies joined in partnership with others to finance the new lines. With few exceptions, companies which were not so formed ran into difficulty. Because the construction of long-distance

pipe lines was perhaps the greatest single technological development in the natural gas industry, much of what I have to say in this paper is based upon the experience of transmission in contrast to distribution companies.

MR. Coffman noted that while the industry sprang up in an inflationary period, it earned its spurs just about the time history was to produce a "regulatory eruption." Mr. Coffman added:

> In 1928, the Federal Trade Commission was instructed by Congress to investigate the public utility industry, but because of the natural gas industry's infancy at that time, little or no attention was given to it. In 1934, however, the picture had altered considerably, and the Congress authorized the commission to continue its investigation of public utility companies and to devote its attention to the natural gas industry. The results of this investigation were prepared in a series of volumes, the last of which was submitted to the President of the Senate on December 31, 1935. Shortly thereafter the Lea bill was introduced to Congress, and this bill, under the title of the Natural Gas Act of 1938, was approved on June 21st of that year. Within a few weeks, broad investigations as to rates and charges were instituted by the Federal Power Commission against the Hope Natural Gas Company and the Natural Gas Pipeline Company of America.

The speaker said this sequence of events is noteworthy in that the industry was young and a number of companies were just beginning to earn a profit in the middle thirties when the Federal Power Commission began its rate investigation. He explained that investors had received little or no return on their money, but that they had not expected any in the early years of this new venture. They had realized, he said, it would take time for the companies to get established; and they expected a fair return on their investment when better times arrived in the industry. It was then, he continued, that the Federal Power Commission stepped in. From 1938 to the present time, nearly every natural gas pipe-line company of any importance, as well as many other utility companies, has been investigated by the Federal Power Commission and, "to put it mildly, subjected to rather harsh treatment," the speaker said, adding:

Meanwhile, the executives of those companies, in spite of the onerous demands of the commission upon them to prepare ream upon ream of facts and information and schedule upon schedule of statistical data, were giving free rein to their patriotism by making every possible contribution to the national emergency.

At the same time, the investor, as well as the gas company executive, found himself in a fog wondering where all this Simon Legree treatment was to lead, for in spite of the varying circumstances of different cases and the different territory and character of load handled by different pipe lines, the Federal Power Commission has always determined the lowest rate base that it could possibly figure, and established the lowest rate of return it felt it could possibly sustain. Although I think it is perfectly sound to protect the interest of the consumer, I do not believe it is sound to accomplish this end by liquidating the investor or by undermining the efficiency of the management.

It has only been a little over a year ago that one pipe-line company offered a block of shares of its $100 par value 5.60 per cent preferred stock to the public at $104, through a very reputable and responsible syndicate. At such price the stock sold on a 5.38 per cent basis. After almost two months, with all the effort the bankers could muster, 35,000 shares remained unsold. At that time the bankers reduced the price to $100, but even at this price the stock did not move rapidly and after seven trading days 15,000 shares still remained unsold. Why should this be the case? The company is one of the better situated pipe-line companies. It had an ample supply of gas, it had tapped an excellent market, and it had begun to show reasonable earnings. It seems to me the answer partly lies in the fact that investors believe that the natural gas pipe line is more hazardous than other branches of the utility business and that 5.38 per cent was not sufficient to compensate them for the risk involved. In other words, the old theory still prevails; *i.e.*, the more risk there is, the greater return capital demands. In last analysis, I believe it is not so much what the commission thinks or what I think, what counts is what the investor thinks, for it is his money which is sought—it is his money which finances construction and expansion, and makes possible the high quality of service rendered to the consumer today. What he says is highly significant, unless, perchance, the government itself intends sooner or later to provide the financing for such developments.

If this should eventually materialize, we would have complete socialization of this industry. I do not believe the administration really desires to go this far, although at times I must confess it has seemed to me as if everything pointed in that direction.

WHO'S HOLDING WHAT LINE?

Bureau of Labor's cost-of-living index with and without cost of electricity
(Jan. 15, 1941=100 per cent)

Year and month	*Bureau of Labor Statistics index including cost of electricity*	*Bureau of Labor Statistics index excluding cost of electricity*	*Bureau of Labor Statistics index of cost of electricity*	*Year and month*	*Bureau of Labor Statistics index including cost of electricity*	*Bureau of Labor Statistics index excluding cost of electricity*	*Bureau of Labor Statistics index of cost of electricity*
1941				*1942*			
January	100.0	100.0	100.0	January	111.1	111.3	99.1
February	100.0	100.0	100.0	February	112.0	112.2	99.1
March	100.4	100.4	100.0	March	113.4	113.6	99.1
April	101.4	101.4	100.0	April	114.2	114.5	99.1
May	102.1	102.1	100.0	May	115.1	115.4	99.1
June	103.8	103.8	100.0	June	115.5	115.7	99.0
July	104.5	104.5	99.6	July	116.1	116.3	99.0
August	105.4	105.4	99.6	August	116.6	116.8	99.0
September	107.2	107.3	99.1	September	116.9	117.1	99.0
October	108.4	108.6	99.1	October	118.1	118.3	99.0
November	109.3	109.5	99.1	November	118.8	119.1	99.0
December	109.6	109.8	99.1	December	....	....	...

THE speaker said that an analysis shows that investors believe the risks involved in various utilities increase in the following order: telephone companies, water companies, electric operating companies, manufactured and natural gas companies, all natural gas companies, and natural gas pipe-line companies. Actually, he said, the composite 5-year average earnings price ratios for the companies in each of the above divisions are as follows: 5 per cent, 5.34 per cent, 5.51 per cent, 6.74 per cent, 7.77 per cent, 9.03 per cent. In other words, he continued, in the opinion of the investor a natural gas pipe-line company faces substantially more hazard than a telephone company; and this, he said, is measured by an additional 4.03 per cent of return demanded by the investor on his money. Mr. Coffman added:

> The composite of investor thinking still makes a fairly reliable barometer, and I wonder if the Federal Power Commission would not do well to recognize this fact. I do not believe it is possible for the commission to continue its present procedure of establishing the lowest possible rate base and the lowest possible rate of return and at the same time permit a company to produce a return which will be sufficient to attract capital to the natural gas industry.

Furthermore, I still fail to see the logic of opinions in which it is contended that the established law of the land is being followed (without burdening you with the details of Smyth *v.* Ames, Bluefield Water Works & Improvement Co. *v.* West Virginia Public Service Commission, United States Railways *v.* West, etc.)—as I say, where it is claimed that the law of the land is being followed by determining on an over-all industry basis that 6½ per cent—no more, no less—is a fair rate of return for every pipe-line company, when everyone—even the commission—knows there are differences in financial structure, sources of gas, markets, managements, opportunities for growth, etc. More particularly is this true when there is, as far as I know, no logical or well-reasoned method of determining such over-the-industry rate of return figure. A directive laid down by the leading Supreme Court case on the subject says, "What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts." If these facts are different as between one company and another, and I think that evidence proves that in many instances they are, it is difficult to see how a 6½ per

cent rate can possibly apply with any semblance of reason in every single case, except on the basis that a preconceived or arbitrary formula is being applied instead of what the court termed "enlightened judgment." It occurs to me that it is most wholesome that a number of Federal Power Commission decisions are being appealed, since this is the only way by which the industry and the investor can ascertain whether the procedures which have been followed by the commission are sound and lawful in the eyes of the courts. More particularly is this true if the pattern laid down by the Federal Power Commission should be accepted or followed by state commissions which are interested in intrastate rates.

Mr. Coffman said that if his assumption that the United Nations will be victorious and that the war will not end until the middle of 1945 proved to be correct, then it becomes probable that our country will be well on the road to victory some time in 1944, which will be an election year.

"Making the best appraisal I can," he said, "I am inclined to believe Mr. Roosevelt is most likely to be our next President." Then he enumerated a number of reasons upon which he based his prediction, including the "never-change-horses-in-the-middle-of-the-stream" argument, the cradle-to-the-grave appeal, and other similar effective political techniques.

THE speaker looked with optimism on the postwar period in the face of what he called the many and varied contingencies. He said Congress seems to be losing its rubber-stamp characteristics, which he saw as a hopeful sign. He predicted there will be some good days in which capital and the profit motive will continue to exist, but on a modified basis. He foresaw a sharp modification of the Delano and Beveridge plans, although admitting that more attention will be given to social security and social planning.

He said as the industrial activity which he has forecast materializes, there will be a tremendous demand for gas. This will lead to the construction of many new pipe lines, which will extend to cities which are not now using natural gas. Among adjustments which will have to be made are (1) the change in uses of gas when present restrictions are lifted, (2) the increase in demand which will spring from the increased postwar industrial activity, (3) the development of new uses for gas, (4) the stepped-up competition which will begin immediately when hostilities end and the demand for armaments is gone.

Mr. Coffman said that while regulation will be with us, there is a hopeful aspect. He said that when the Securities and Exchange Commission was established the investor and everyone connected with the securities business were much distressed by its early methods, policies, and procedures. As time passed, this commission's horizon has broadened —"so I am willing to believe," he went on, "that once the emergency is over, the Federal Power Commission, as in the case of other regulatory bodies, will mellow with time and will begin to recognize the laws of economics rather than to close its eyes to those laws."

—C. A. E.

Notes on Recent Publications

MUNICIPAL ELECTRIC UTILITIES IN TEXAS. By Robert H. Gregory. Municipal Studies No. 20, prepared by the Bureau of Municipal Research, Austin, Tex. 1942. 295 pp.

This work traces the history and legal status of municipal electric utilities in Texas, their management, operation, and control, financial policies and operation results, budgeting and accounting, auditing and reporting, rates, and relation to rural electrification. Prepared for the benefit of city administrators, councilmen, finance officers, utility managers, and others interested in the operation of municipal electric utilities in cities contemplating the installation of electric plants or those seeking to make more efficient the management of their present holdings.

THE TENNESSEE VALLEY AUTHORITY. A Study in Public Administration. By C. Herman Pritchett. North Carolina. Price $3.50.

The March of Events

Farm Electricity Needs Met

A POLICY to govern farm electrification extension in excess of 5,000 feet was announced on July 1st by J. A. Krug, director, Office of War Utilities. These extensions have been held up in recent months because of the amounts of materials involved.

Since January 1st shorter extensions have been approved almost automatically for applicants who qualify before their USDA county war boards under the terms of Order U-1-c. While the same general terms will apply to the longer extensions, each application will be considered individually by the OWU.

While no greater amounts of material for farm extensions are available than has been the case heretofore, studies have revealed that the increase in food production is proportionately greater in some instances from longer lines.

FPC Issues Show-cause Orders

THE Federal Power Commission on July 5th announced its order directing the Washington Water Power Company, Spokane, Washington, to show cause within forty-five days of the date of the order why it should not apply for and secure from the commission appropriate authorization for the operation and maintenance of its Post Falls hydroelectric development on the Spokane river, the outlet to Coeur d' Alene lake in Idaho. The commission also announced its order directing the Duke Power Company, Charlotte, North Carolina, to show cause on or before September 1, 1943, why it should not apply for and secure a Federal license for the operation and maintenance of its hydroelectric project in and along the Seneca river at Portman Shoals, Anderson county, South Carolina.

The order concerning the Washington Water Power Company stated that the operation and maintenance of the Post Falls project affects the water level of the Coeur d' Alene lake and tributaries and results in the flooding, use, and occupancy of certain lands owned by the United States. The project has an installed capacity of 11,250 kilowatts.

Seeks Ban on Rail-bus Ownership

SENATOR Wheeler, Democrat of Montana, told the Senate on July 1st that he was planning to introduce legislation to prevent railroads from owning busses and trucks. A speech by Senator Shipstead, Republican of Minnesota, precipitated debate on transportation.

Shipstead contended the Interstate Commerce Commission, as well as a majority of the Supreme Court, had ignored provisions of the 1940 Transportation Act prohibiting discriminations against water carriers in the application of proportional rates.

Wheeler, chairman of the Senate Interstate Commerce Committee, said he had been disappointed by some of the ICC's rulings under the act. He expressed fear of transportation monopolies, and declared: "I am going to introduce legislation when Congress reconvenes after the recess to prevent railroads from owning busses and trucks and other means of transportation competition."

He added that the prohibition likely would prevent the owning of air transportation facilities.

Bureau Distributes Power

THE major part of the newly produced power at Fort Peck dam, Montana, will be distributed by the Bureau of Reclamation to war industries in that state and Utah, Secretary of the Interior Harold L. Ickes announced on July 3rd on the basis of a report from the bureau's acting commissioner, Harry W. Bashore.

The plant, which has begun commercial activity with more than 30,000 kilowatts of capacity, was constructed and is operated by the Corps of Engineers, War Department. The output is distributed by the Bureau of Reclamation, Department of the Interior, under a congressional act approved May 18, 1938. Rates are subject to approval by the Federal Power Commission.

Acting Commissioner Bashore advised Secretary Ickes that Fort Peck power would have an important place in the development and utilization, in the prosecution of the war, of the mineral resources of Montana and Utah. Practically all of the power developed in these two states is hydro and the Fort Peck output is a further conversion of natural resources of the West into useful channels, Mr. Bashore added.

The additional power from Fort Peck dam to the Bureau of Reclamation systems in the West brings to more than 1,875,000 kilo-

watts the capacity of 31 plants on reclamation projects or the output of which is distributed by the bureau.

Dam Proposal Studied

FORMER United States Senator C. C. Dill of Spokane, Washington, was recently reported to have said that United States Army Engineers are studying possibility of constructing a 100-foot dam at Arrow lakes in British Columbia to increase the storage behind Grand Coulee dam on the Columbia river.

"Organized opposition from farmers in Idaho and Montana is strengthening the possibility that both the Albeni falls and Flathead lake sites may be dropped in favor of a ten to twelve million dollar dam in British Columbia," he said.

The 100-foot dam proposed for Arrow lakes would approximately double the storage behind the dam and increase Grand Coulee's power output, he explained. He added that no definite decisions had been made, but "the need for increasing the power output of Grand Coulee is certain."

Reclamation Bills Approved

THE House Irrigation and Reclamation Committee last month approved bills (HR 3018 and HR 3019) to facilitate reclamation construction as soon as the War Production Board lifts its stop order on such work. Representatives of the reclamation service explained to the committee that prime purposes of the measures are to relieve project settlers of high war-time costs and to provide an alternative for assistance from agencies now discontinued.

Appropriations for numerous projects intended to increase food production are under consideration by Congress and WPB is making a study to determine if labor and materials can be spared to permit construction.

Harry W. Bashore, acting reclamation commissioner, said the bills were designed "to relieve peace-time restrictions so the Reclamation Bureau may get results, once the WPB gives us the green light."

Utility Conservation Drive

VOLUNTARY all-out conservation of uses of such public utilities as power, natural and manufactured gas, transportation of all types, water, and fuel will be urged upon the American public next month in a coördinated advertising campaign financed by the industries involved and sponsored by Federal war agencies.

A program designed to effect savings in such resources as man power, fuel, transportation, and critical materials required for maintenance and repair has been drawn up by the Office of War Utilities of the War Production Board and has gained the support of other Federal agencies and of the industries concerned.

In addition to the WPB, the war agencies which are backing the program include the Office of Petroleum Administrator for War, the Solid Fuels Administrator for War, the Federal Power Commission, and other Federal agencies.

The plan's objective is to gain voluntary coöperation of consumers, both home users and industrial plants, of public utilities and services in reducing consumption. Although accurate predictions as to possible economies were not available, officials said that the savings in consumption of fuel, materials for repairs and maintenance, transportation, and actual man hours would be substantial if general support for the plan could be won.

In general, the drive would be modeled upon that conducted by the telephone companies, which have been attempting to discourage unnecessary calls by advertising that lines are burdened with essential calls.

The WPB is sponsoring the campaign because it is believed that greater savings in resources can be achieved through voluntary compliance of consumers than by mandatory regulations. However, if the voluntary program should fail the agency has sufficient power to compel compliance.

Columbia Basin Exploitation Opposed

REPRESENTATIVE Horan, Republican, Washington, in a statement protesting any "exploitation" of the states of the upper Columbia basin in the search for supplemental water supplies for Federal power facilities, recently declared that any interference with the rights of the peoples of Montana and Idaho was unnecessary.

"If I thought that (exploitation) were necessary for the full development of our great region, I would say let us stop that development," Horn said, "because no development is worth the destruction of the happiness and usefulness of another. Fortunately, interference with the rights of these states is not necessary."

Pacific Utilities Honored

ON behalf of James M. Landis, national director of the Office of Civilian Defense, a special honor award, the first of its kind, was presented on July 7th to the lighting industry of the Pacific coast and each of its members for maintaining an effective dimout on this edge of the continent.

The industry furnished more than 240 technical men, without cost to the government, on problems incident to the reduction of the target visibility of the West coast, and all these men are "still at their post of duty," James C. Sheppard, chairman of the ninth regional defense board, said at a luncheon at the Commercial club in San Francisco at which the award was made.

Arizona

Withdraws Offer

THE Federal Light & Traction Company of New York has withdrawn its offer to sell for $9,100,000 the Tucson Gas, Electric Light & Power Company to the municipal government. Mayor Henry O. Jaastad said the action was taken after the concern had been advised the mayor and city council had accepted a report by the citizens' utility committee opposing the proposed purchase.

The offer made by C. H. Nichols, president of the New York firm, to William R. Mathews, chairman of the utility committee, included a plan enabling the city to acquire the Tucson Rapid Transit Company for an outlay of $1.

REA Loan Allocated

ALLOCATION of a loan of $345,000 by the Rural Electrification Administration to the Sulphur Springs Valley Electric Coöperative, Inc., for the construction of new lines in the postwar period, was announced last month by the U. S. Department of Agriculture.

Under the allocation order, the coöperative will be permitted to construct 170 miles of new lines to serve 1,038 members; 155 miles of lines to serve 359 members; and $185,000 for the purchase of 15 miles of lines now serving 679 customers.

Utility Hearing Set

THE complaint of Governor Sidney P. Osborn against Arizona natural gas distributing agencies—which has been pending since last December—has been docketed by the state corporation commission for hearing July 29th. The date was set by the commission following a session with counsel for the governor and the companies as to the date desired for the hearing.

M. J. Dougherty, attorney for the governor, asked for a continuance until September, when the complaint of W. W. White against the Central Arizona Light & Power Company is scheduled for hearing. Dougherty said he needed time in which to prepare his case. Walter Roche, representing the Central Arizona Light & Power Company, and Charles L. Strouss, acting for the Tucson Gas, Electric Light & Power Company, objected to the proposal. They asked for a hearing next month.

Votes Municipal Ownership

MUNICIPAL authorities of Thatcher were expected to take possession by July 15th of the properties of the Arizona General Utilities Electric system of Safford, which local voters agreed on June 24th to purchase for $450,000, it was reported recently.

An overwhelming vote of 165 to 8 authorized officials to issue $465,000 in revenue bonds for the purchase of the utility that serves Thatcher, Safford, Solomonsville, Central, Pima, and the northern section of the Sulphur Springs Valley Coöperative of the Rural Electrification Administration.

The purchase agreement approved in balloting stipulated the municipal system would make payments in lieu of taxes to all political subdivisions that would be receiving tax payments at the time the utility ownership changes. Municipal properties, including utilities, may not be assessed by taxes by other political subdivisions.

Thatcher voters agreed also to not change the property's management and to make a 10 per cent rate reduction within the first year of operation.

Arkansas

FPC Asks Explanation

THE Federal Power Commission last month directed the Arkansas Power & Light Company to show cause within ninety days why it should not be ordered to mark off $17,000,000 in book valuations, which are a big factor in establishing rates.

The commission described the $17,000,000 as "write-ups and other amounts representing excess over original cost."

It further ordered the company to show at the same time "why it should not prepare and submit revised reclassification and original cost studies with respect to an additional $47,000,000" on its books.

Arkansas Power & Light operates in Arkansas and Louisiana, serving approximately 325 communities, including Little Rock, Pine Bluff, El Dorado, Camden, Russellville, Malvern, Newport, Morrilton, and Arkadelphia.

Rate Cuts Authorized

THE state department of public utilities on June 29th authorized annual rate reductions totaling $27,147 to power and light customers of the Oklahoma Gas & Electric Company in northwest Arkansas. The revised rates were approved on application of the utility.

A. B. Hill, chairman of the utilities commission, said the reductions were not contrary to the March 26th order of the department

which established the policy of providing for refunds of excess earnings to customers during the war rather than deductions in rates.

The commission said the expression of this policy (March 26th order) was in general terms and not a fixed determination as to action that would be followed in regard to any particular utility company operating under the jurisdiction of the department.

Towns to be affected by the rate reductions include Fort Smith, Alix, Alma, Altus, Branch, Charleston, Hartman, Lamar, Lavaca, Mulberry, Ozark, Scranton, Van Buren, Barling, Chester, Denning, Dyer, Mountainburg, Ratcliff, Subiaco, Winslow, and Coal Hill.

Favors AVA under Engineers

GOVERNOR Homer M. Adkins said recently he would favor creation of an Arkansas Valley Authority if it would be controlled by the Army Engineers "in whom I have implicit confidence."

Adkins said in an interview that he strongly favors development of the natural resources of the Arkansas river valley, but wants the Army to have charge of the program. Several Arkansas Congressmen have advocated an AVA modeled on TVA which is independent of the Army.

Concerning the President's recent action putting the Federal Works Administration in charge of disposing of the power generated at the nearly complete Norfork dam and directing the FWA to coördinate its sale with that generated at Pensacola dam, Adkins remarked:

"I have not yet studied the order in detail but I am not so much concerned with who distributes or sells the power as I am with whether there shall be plenty of power available for our region."

Members of the Arkansas congressional delegation were asked by the state flood control commission recently to use their influence to have work on the proposed AVA begun as speedily as possible. The commission, meeting in Little Rock, endorsed the proposed authority as "the only feasible and practical way to control floods." It was the commission's first statement on proposed construction of combined hydro and flood-control dams in the Arkansas valley.

Colorado

Asked to Approve Transfer

THE Mountain Utilities Corporation asked the state public utilities commission last month for permission to transfer to the Intermountain Rural Electric Association, an REA coöperative, the certificates of public convenience and necessity under which five Douglas, Elbert, and El Paso county communities are served electricity.

The transfer would accompany sale of the Mountain Corporation's transmission, distribution, and service lines supplying Kiowa, Monument, Elbert, Elizabeth, and Palmer Lake and their vicinities. On June 15th, the commission was informed, the two companies entered into an agreement for exchange of the properties for $147,500, subject to certain adjustments.

The Mountain Utilities Corporation distributes energy bought from the Colorado Springs municipal power plant. It operates hydroelectric plants at Aspen and Buena Vista, but these are not involved in the proposed transfer, Henry S. Sherman, chairman of the commission, said.

District of Columbia

US Agencies File to Cut Rate

THE Potomac Electric Power Company rate controversy entered the stage of judicial review on July 2nd when the Office of Economic Stabilization, the OPA, and the director of procurement of the Treasury filed petitions of appeal in district court asking that the District of Columbia Public Utilities Commission decision granting a $310,000 yearly decrease in electric rates be set aside in favor of a decrease of more than $2,000,000.

The OPA and the OES are intervening on the ground that PEPCO, under the rates proposed by the commission, will tend to cause inflation and defeat the price stabilization program.

The Treasury, which pays approximately $5,000,000 a year to PEPCO for electric power, contended that current rates are unjust to it, the largest single consumer.

The rate reduction approved by the commission would reduce the monthly electric bill of the average consumer by about 4 cents. The government agencies filing suit seek a 10 per cent reduction.

Illinois

Traction Appeals Denied

THE state commerce commission last month refused to hold any more hearings on the Chicago traction unification plan which was rejected May 3rd on the ground that it was financially unsound and offered the public no assurance of improved service on the surface and elevated lines.

However, the commission reiterated its belief in the desirability of unification and expressed willingness to listen to any plan that would eliminate the defects in the one that was turned down.

In a second order the commission firmly denied requests for the reopening of the case in which the surface lines were granted a permanent 8-cent fare. The city and the Office of Price Administration had requested the rehearing on the allegation there were errors in the commission findings.

The unification rehearing was asked by the city and attorneys appointed by the Federal District Court to represent the proposed new unified traction company, which was to have been capitalized at $179,000,000. They based their plea largely on a letter from Jesse H. Jones, chairman of the Reconstruction Finance Corporation, to Mayor Kelly in which Jones had set up conditions under which RFC would be willing to lend $40,000,000 to buy part of holdings of present security holders.

Indiana

Seeks Uniform Schedule

FIRST steps toward reducing and making uniform the present haphazard fare schedules of the Indianapolis Railways transportation system were taken recently by the state public service commission.

The state commission, acting on a petition filed by Howard T. Batman, public counselor, directed officials of the Indianapolis Railways to "show cause" why fares should not be reduced and made uniform and the present transfer fees be completely eliminated.

The commission fixed July 15th as the time for opening hearings on the case.

In presenting his petition, Mr. Batman told members of the commission that the Indianapolis street railway enterprise in its latest annual report showed an increase of $393,599 in its 1942 operating income, as compared with that of 1941. This figure, Batman said, provides justification for the complaint and the subsequent decision of the commission to ask for fare adjustments.

Iowa

Promise Rate Cut

OFFICIALS of Continental Gas & Electric Corporation hold out the promise of sizable rate reductions if the Securities and Exchange Commission approves the proposed sale to it of the gas and electric utilities in Des Moines, City Solicitor Fred T. Van Liew said recently.

Reporting on his attendance at an SEC hearing on the proposal at Philadelphia, Pennsylvania, Van Liew said this holding company made the possibility of lower rates a major selling point for the transfer. Utility representatives, he said, presented a "mass of evidence" to indicate the reorganization would result in "very great economies in operating and financing" and that these would be passed on to the consumers.

Conversion to natural gas, instead of "mixed" gas, which includes manufactured gas, was said to hold a prospective $75,000-a-year saving, according to a statement by Mr. Van Liew.

Kansas

Commissioner Appointed

GOVERNOR Schoeppel has appointed Clarence V. Beck a member of the state corporation commission to succeed Jeff A. Robertson, whose resignation to become a Captain in the Army was recently announced.

The new commissioner is a former state attorney general. He retired from that office in 1939 after two terms of service, and has since been in general law practice in his home city of Emporia.

Richard B. McEntire, formerly secretary of the commission, is now general attorney.

Kentucky

Purchase Plan OK'd

THE court of appeals on June 25th approved Frankfort's plan to buy the city's light and water plants for $1,200,000 and to issue revenue bonds to finance the deal. Attorneys for the city expressed belief details, including compilation of data on gross and net earnings to acquaint prospective bond purchasers with stability of the plan, could be completed in time for the city to take over by August.

The high court upheld Franklin Circuit Court's validation of the plan by a 5-to-2 vote, with Judges Henry Tilford and Porter Sims dissenting. They filed no minority opinion, however.

The deal already has been approved by the city council and by the Associated Electric Company of New York, owner of Tri-City Utilities Company which operates the local plants.

It was indicated that light and power rates would be reduced as soon as the city begins operation by at least the 22.3 per cent ordered by the state public service commission and that consumers would be given rebates on bills back as far as last December 1st in accordance with a court order issued when the company sought to enjoin the commission's rate cut order.

Court Reaffirms Tax Ruling

A RULING that Kentucky's 26 rural electric coöperatives are subject to state and local taxation was made final by the court of appeals last month. The appellate court ruling was put into immediate effect automatically when the tribunal refused to reconsider its March 26th decision in a test case brought by the Inter-County Rural Electric Coöperative Association of Danville.

In that decision the high court upheld Franklin Circuit Judge W. B. Ardery's invalidation of a statute exempting the co-ops from paying *ad valorem* property and franchise taxes. The statute, enacted by the 1937 state legislature, permitted the co-ops to pay annual $10 fees in lieu of taxes.

The state property tax of 50 cents per $100 valuation and county and school taxes were made applicable to the coöperatives' lines, poles, wires, transformers, and other equipment by the court's final ruling.

Co-op Groups Form Firm

REPRESENTATIVES of 24 power distributing coöperatives completed formation of the Kentucky Rural Electric Coöperative Corporation at a meeting held in Louisville last month. C. E. Miller, chairman of the Meade County Rural Electric Coöperative Corporation, was elected president. Other officers elected were, vice president, Robinson Cook, Danville, secretary-treasurer, G. L. Bridwell, Cynthiana.

Purpose of the organization, Bridwell stated, is "to promote and encourage the fullest possible use of electric energy in this state by making electric energy available by production, by transmission, and by distribution to persons in rural areas of the state at the lowest cost consistent with sound business methods and prudent management."

Missouri

Property Sale Authorized

AN order of the state public service commission authorizing sale of the property of the Laclede Power & Light Company of St. Louis to the Union Electric Company of Missouri was affirmed last month in Cole County Circuit Court at Jefferson City by Circuit Judge Frank Hollingsworth of Mexico, Missouri.

In upholding the proposed sale, Judge Hollingsworth overruled contentions of Attorney General Roy McKittrick, who had appealed, that the commission order should be reversed and remanded to the commission for determination of question of rates.

Judge Hollingsworth said the commission order approving the proposed sale was within the jurisdiction of the state public service commission and was supported by the evidence. Judge Hollingsworth said he could not substitute his judgment for that of the commission, absent a showing that the commission had rejected competent evidence or had failed to give due consideration to competent evidence.

Nebraska

Lay Plans for Referendum

EFFORTS may be made through a referendum petition to halt operation of Nebraska's newly enacted legislation creating the Omaha Peoples Power Commission, Harold Kramer, general manager of the Loup River Public Power District, stated in Washington, D. C.,

recently. He told a reporter that Nebraska public power circles are considering such a move to counteract "the defeat we suffered in the legislature."

He referred to the unsuccessful fight put up by public power interests, particularly the Consumers Public Power District, against the measure, LB 204, while it was before the unicameral legislature.

Under terms of the act, which is scheduled to become effective in August, the Consumers District is forbidden from purchasing the last remaining private power concern in the state —the Nebraska Power Company in Omaha.

The law, instead, sets up the Omaha Peoples Power Commission and authorizes it to acquire the Nebraska Power Company.

Investigating Committees Appointed

Two important investigating committees, water diversion and public power, were named at the initial meeting of the legislative council, research body for the state legislature, on June 28th at Lincoln by Senator Stanley Matzke, Seward.

Senator Peterson of Lincoln will head the water diversion group and Senator Raecke was appointed chairman of the committee to study public power. Assisting Peterson will be Senators Neubauer, Orleans; James H. Anderson, Scottsbluff; John Doyle, Greeley; and Tvrdik, Omaha. On Raecke's committee are Senators Garber, Red Cloud; Cullingham, Omaha; Mischke, Crofton; and Mekota, Crete.

R. V. Shumate, research director, reported on the progress he has made in gathering factual information relative to all public power districts in the state. In reply to a question by Senator Peterson, he said that there would probably be some overlapping of the studies to be made by the power and water diversion committees because some power districts are also vitally interested in irrigation. The legislature gave the council an appropriation of $34,000 but of this $20,000 is for the water and power studies.

The power investigation is to be along these lines: business affairs of the district; the purchase of privately owned plants and transmission lines; financing of such districts; issuance of bonds; fees, commissions, and expenses in connection with purchases of private power properties; political activities of districts and of privately owned utilities; business and affairs of the Nebraska public power system; activities of districts to be organized under existing laws; and all other matters necessary to afford the legislature a clear perspective and view of the entire electric power situation in the state.

Case Jurisdiction Questioned

The power of the state supreme court to supervise and direct the activities of a court of condemnation named to appraise the value of electric properties a municipality has voted to take over was debated on June 28th in a special session. On the one hand it was argued that in naming the court it acted in an administrative capacity and as such could tell it what to do and what not to do. On the other hand it was argued that having complied with the statute empowering it to name the court its jurisdiction ended right there.

The case was regarded as of vast importance because upon the decision rests the question of whether any other of the numerous municipalities served by Consumers Public Power District may avail themselves of this law. The city of Sidney only is involved in this case, but Nebraska City and Bridgeport were reported on the way with similar proceedings.

Clarence A. Davis, attorney for Consumers, said although the supreme court has twice upheld the law under which the appointments were made, he is of the opinion that it is unconstitutional. His position is that if it is a court then the law is invalid because the Constitution forbids the setting up of special courts for special purposes. If it is not a court then it is an attempt to give the judiciary department administrative authority which the Constitution forbids the department from exercising.

L. J. TePoel, appearing for the city of Sidney, took the position that as the statute has four times been upheld—twice by the Nebraska Supreme Court, once by a Federal Circuit Court of Appeals, and once by the supreme court of Iowa, from which state the Nebraska law was taken bodily—that question may be considered settled.

Mr. Davis was given fifteen days to file a brief, and Mr. TePoel fifteen days to file an answer.

New Jersey

Power Workers End Strike

A WALKOUT of 2,800 maintenance employees of the Public Service Electric & Gas Company, largest public utility in New Jersey, ended on June 23rd with an agreement between the company and Local 1335 of the International Brotherhood of Electrical Workers, that a contract would be drawn.

The walkout began on June 21st in Essex county and spread to seven other counties in central and northern New Jersey. Production of electricity and gas was not affected by the walkout.

Irving Shapiro, of the United States Conciliation Service, said that the union, an American Federation of Labor affiliate, and the company had agreed to mediation of some issues.

New York

Niagara Fees Challenged

THE constitutionality of the 1943 law permitting the state to charge rentals for 15,100 cubic feet of water per second being diverted from the Niagara river was challenged on July 1st by the Niagara Falls Power Company as the Water Power and Control Commission prepared to establish the schedule of fees.

The company applied in the state supreme court at Albany for an injunction.

The water power rental bill was one of the major measures in Governor Thomas E. Dewey's first legislative program. He requested its enactment after the court of appeals had held that the company was entitled to divert the additional water without charge under an old statute, but had indicated that the situation could be corrected by enacting another law.

It was estimated that the state would receive about $1,500,000 a year under the fee system. The utility now pays $400,000 a year for 4,900 cubic feet per second under a 1918 law.

CIO Certified for Utility

THE New York State Labor Relations Board on July 4th announced that it had designated Local 101 of the Transport Workers Union of America, Congress of Industrial Organizations, as the collective bargaining agency for employees of the Brooklyn Borough Gas Company, exclusive of clerical and supervisory personnel and salesmen. The board ruled that the certification was to remain in force for one year or not more than sixty days after the war, which ever was shorter.

In another decision the board directed that an election be held within twenty days among employees of the Queens Borough Gas & Electric Company to determine whether they desired that the same local represent them in collective bargaining.

Advised to Cut Liabilities

THE public utilities in New York state were recently advised by the state public service commission to use accumulated cash not immediately needed for capital or operating purposes to improve their financial structure through the retirement of liabilities in order that they be better able to meet the uncertainties of conditions after the war.

This warning was contained in an opinion by Chairman Milo R. Maltbie and unanimously approved by the commission in connection with the authorization of security issues by two utilities, each of which involved the use of accumulated funds for the retirement of outstanding securities.

In one instance, the Rochester Gas & Electric Corporation, with an accumulation of more than $5,000,000 in cash in its treasury, was authorized to use nearly $4,000,000 to retire its 6 per cent preferred stock. In another instance, the Orange & Rockland Electric Company was directed to use $165,000 for the retirement of its preferred shares as a condition for the authorization of $200,000 of 5 per cent preferred stock so that it could redeem an equal amount of its outstanding 6 per cent preferred shares.

The opinion said that with large accumulated cash funds "the temptation is great to increase the dividend rate, to pay bonuses, or to distribute generously the unusual earnings." The commission said any of these plans would be most unwise unless or until the company has made abundant provision to meet all postwar requirements.

Oklahoma

Dam Operation Challenged

A BLUNT challenge that Douglas Wright, manager of the Grand River dam, produce concrete evidence that the project has been operated partially for flood prevention was issued recently. The demand was made by George A. Davis, president of the Oklahoma Gas & Electric Company.

In a strongly worded statement, Davis asked Wright to reveal what part of the approximately $25,000,000 invested in the dam by taxpayers was being applied toward flood control. "Most certainly the people of Oklahoma are entitled to know this," Davis said, "and I am asking Mr. Wright to make a public announcement of these figures."

Davis suggested that Wright's policy in operating the dam had been to generate unneeded electric power, thus attracting greater revenues, rather than affording flood protection to the state's farm lands.

"Ever since the recent floods on the Grand and Arkansas rivers, Mr. Wright has been ex-

tremely vocal in attempting to defend his operation of the dam," Davis continued, "but he has not included in any of his statements just how much of the people's money spent on the dam is charged to flood control and how much against electric power. It is my belief that the thousands of farmers in the valleys of eastern Oklahoma are more interested in flood control than they are in having more power dams, particularly at a time when they have just witnessed the rivers' devastation amounting to many millions of dollars loss in fertile lands, crops, and livestock, and at a time when they have all the electric power they can use."

Management of the dam, at first under control of the state Grand River Dam Authority, has since been transferred to the Federal Works Agency. Its revenues now are turned over to the Federal government. A lease price is to be paid the state.

Bus Fare Cut Ordered

THE state corporation commission last month issued an order reducing Oklahoma City bus and street-car fares to 4 tokens for 25 cents, effective June 21st.

The commission's order was issued after a formal hearing in which testimony was taken from Paul Reed, commission auditor. Judge Edgar S. Vaught cleared the way on June 18th in Federal court for the commission's action when he approved the agreement of Robert K. Johnston, trustee, and attorneys for the Oklahoma Railway Company with corporation commission attorneys.

Under the new schedule of fares, bus and street-car tokens are 4 for 25 cents instead of 2 for 15 cents.

Reed estimated the fare reduction would reduce revenues of the company about $400,000 a year.

Tennessee

Power System Causes Tax Loss

CHATTANOOGA's loss of approximately $160,000 in total tax revenues resulting from the transition from a privately operated power system to the present system of public power was revealed recently by City Treasurer Alvin Shipp.

The city government is attempting to obtain additional returns in some manner from the electric power board of Chattanooga to help meet increased expenditures for the fiscal year beginning July 1st and the tax revenue loss incurred at the inception of the public power system was pointed to as one reason for the "fairness" of increased contributions from the power board to the city.

The tax books show the Tennessee Electric Power Company paid the city approximately $180,000 annually in taxes. When the power board took over, the "tax replacement" payments to the city by the board were set at $135,000 a year—payments made in lieu of taxes paid by TEPCO on properties taken over by the power board.

When TEPCO was dissolved, the coach line operated by it became a separate unit under the name of Southern Coach Lines and as such pays an annual tax to the city of $22,000, making a total at present from the power board and the coach line of $157,000 annually in taxes. This amount, it was pointed out, falls short of taxes previously collected by $23,393.

In addition, the city collects no taxes directly on the Market street portion of the power building occupied by the Tennessee Valley Authority. Instead, the state collects the taxes, at the city rate of $2 per $100 assessed value, and returns only half, or $16,478 per year to the city. Because of this, the city loses $16,478 per year on the TVA quarters, as that portion of the power building formerly paid $32,956 annually in taxes.

Total losses on transition from private to public operation of the power system, therefore, were set at $39,871 per year, which will reach a total of $159,484 at the end of the current and fourth year of public power operation.

Texas

Rate Issues Studied

QUESTIONS of how to reduce domestic electric rates and make other concessions without impairing reserve funds of the Dallas Power & Light Company were discussed by officials of the utility and the city of Dallas recently in the office of Utility Supervisor J. W. Monk.

Previously, councilmen discussed the status of the company's reserve accounts and what the effect would be if the authorized return is cut, rates are reduced, and a 4 per cent gross receipts tax is put into effect, together with some other franchise changes.

George L. MacGregor, president, and W. H. Clark, Jr., attorney for the company, presented their side of the picture in the negotiations at

the meeting. They insisted that the company must have a guaranteed reserve earning power to protect the property in the future, particularly in the postwar period when many repairs and replacements must be made that the war now prevents.

The city so far has declined to guarantee a reserve and depreciation account and a 10-year moratorium on possible purchase of the utility property by the municipality, as company officials have asked.

Utah

Seeks Part in Rate Case

ALLEGING that rates charged Army installations in Utah by the Utah Power & Light Company are "highly exorbitant and excessive, resulting in the dissipation of extensive War Department funds earmarked for the prosecution of the war," the Ninth Service Command recently filed a petition in intervention in the state public service commission's rate case against the power company.

The petition, which estimated that Army installations will buy $866,872 worth of electricity from UP&L in the next twelve months, set forth that the War Department has attempted without success to negotiate lower rates from the company. It said the company had indicated a willingness to enter into information negotiations, and on May 13th the War Department submitted to the company the results of extensive studies it had made. They were sent by company officials to New York for analysis by Ebasco Services, Inc., and on June 11th a representative of the War Department was informed "that the company had heard from its New York management and consultant company and that . . . (UP&L) was not now interested in negotiating with the War Department."

The Army asked that it be heard regarding the distribution of any possible reduction in power rates which might be ordered by the commission, and that it be allowed to file a report and analysis with suggested new rate schedules.

The petition alleged further that "efforts to negotiate even the most obvious rate inconsistencies were of no avail."

Power Case Appeal Filed

A REQUEST that the state public service commission grant, "without modifying restrictions or conditions," the pending application of Utah Power & Light Company to acquire properties of Utah Light & Traction Company so that the Securities and Exchange Commission can have a free hand in "simplification of the Utah Power & Light system corporate and capital structures," was submitted to the commission last month.

It came from a group of thirteen Salt Lake citizens who claim to represent a large block of preferred stockholders. The statement set forth there are 14,000 such stockholders, 6,000 in Utah and 1,600 in adjoining states, it was reported.

At the hearing on the power company's application, witnesses of the commission staff proposed that the acquisition be allowed only on condition that $30,000,000 worth of common stock, allegedly representing no actual investment, be eliminated. If this were done, the Electric Bond and Share Company would lose its present control of the Utah Power & Light Company.

Wisconsin

Carrier Pacts Signed

GOVERNOR Goodland last month signed reciprocity agreements between Wisconsin and Nebraska, Iowa, South Dakota, Michigan, Minnesota, and Ohio, all effective July 1st, covering motor carrier registration, permit fees, and taxes.

Agreements had been made previously with Illinois and Indiana, subsequent to legislative approval of reciprocity agreements during the current session of the state legislature. The agreements recently signed extend reciprocity as far as the laws of respective states permit to all the states bordering on Wisconsin.

The agreements negotiated for Wisconsin by the motor vehicle department do not exempt interstate for-hire carriers from the requirements of filing insurance with the department, and obtaining of operating authority from the state public service commission.

With the exception of Minnesota and Iowa, full and complete reciprocity is extended to interstate for-hire operators on registration fees, permit fees, and taxes.

The Minnesota agreement extends reciprocity only to private carriers and those for-hire carriers transporting petroleum products or livestock. The Iowa agreement differs from the other agreements in that common carriers from Wisconsin operating in Iowa will have to pay the Iowa compensation tax.

The Latest Utility Rulings

"Supersession" Doctrine and War Taxes Discussed in Rate Case

CONCLUDING that it was unnecessary to establish a fair value or fair rate of return for the New Haven Water Company, because indicated returns on any base submitted would not be excessive, the Connecticut commission found that filed rates were not unreasonably high. Aside from the more usual factors in rate cases, the commission considered the doctrine of "supersession" and also war taxes.

A witness for the city of New Haven contended that the old property of the company should be depreciated further by more than $2,000,000. He admitted that the books of the company reflected the investment of money that had actually been made. It was his contention that an additional investment of some $2,000,000 should be made to complete one development, and, if made, would render much of the old property obsolete. The commission said:

> Supersession, as he used the term, is identical with functional depreciation. He thus expressed the opinion that the company's property used and useful in the public service is $12,500,000 in value for rate-making purposes.
>
> Dr. Bauer insisted that he subscribed to the doctrine of prudent investment in establishing a rate base. He was asked if his doctrine of supersession did not represent "the cost of reproducing the service" so far as the additional expansion of Lake Gaillard is concerned. His answer to this query was "yes," in substance, that is, he arrived at the same result but by a different process of reasoning . . . Doctor Bauer submitted a memorandum in which he attempted to differentiate between the doctrine of supersession and that of the cost of reproducing the service. The commission is unable, from an examination of this memorandum, to see that there is any substantive difference between the two concepts.

Since the witness admitted his familiarity and concurrence with Legislative Document (1930) No. 75, of the state of New York incorporating a criticism of the reproduction cost theory, the commission said it was difficult to reconcile his answers to questions with his theory of supersession. He could not "consistently use prudent investment in those cases in which it supports his claims and, at the same time, reject prudent investment, substituting therefor the cost of reproducing the service or supersession, in those cases in which prudent investment does not support his contentions as to fair value."

Testimony by a witness for the company as to a fair value of $25,000,000 was also criticized. He had estimated reproduction cost at $28,010,000 and book cost at $18,373,720, before deduction of a depreciation reserve which would bring it down to $14,592,788. The weight given to reproduction cost, said the commission, was not justified.

Inclusion of a substantial amount for going concern value with respect to which there was no evidence was criticized with the statement that going concern value as an element of value has been minimized or discredited in recent decisions of the Supreme Court, particularly where a reproduction cost estimate containing allowances for miscellaneous cost of construction has been a primary factor in establishing a rate base.

On the question of war taxes the commission stated:

> The city of New Haven, through its expert witness, Doctor Bauer, claimed that war taxes should not be deducted as an operating expense in arriving at a fair rate of return.
>
> Doctor Bauer claimed that such taxes should fall properly upon the stockholders and represent the contribution of the own-

ers to the cost of promoting the successful outcome of the war. No court, so far as the commission knows, has, as yet, passed upon the propriety of the exclusion of war taxes. In the current case the issue is academic in that the exclusion of the war taxes would necessitate, as a means of maintaining the integrity of the investment and insuring the ability of the company to render adequate service, an appropriate modification in what constitutes a fair return. Hence, the tabulation set forth . . . includes all taxes. Irrespective of what name is attached to present taxes there is little prospect that tax rates in the proximate future will revert to the prewar levels and thereby enable the New Haven Water Company to absorb them without making an appropriate reflection in its rate of return.

Re New Haven Water Co. (Docket No. 7075).

Policy Stated As to Earnings during War Emergency

THE Pennsylvania commission has adopted a "statement of policy" as to earnings during the war emergency. Increased earnings are noted although there has not been a corresponding rise in capital investment, because of the larger demand for utility services by industry, occasioned by war, the limitations and restrictions placed on utility capital investment, and the indirect effect which heightened industrial activity has upon the spending practices of various consumer groups.

Whether or not this increase in earnings has resulted in an unreasonable return, said the commission, is determinable only after full consideration of a utility's affairs. The artificial economic situation produced by the war program renders difficult an adjudication of rates which would be fair and reasonable both now and after the war.

The commission takes cognizance of the increased speed and continuous use of equipment required to meet demands for service; the departure from maintenance routine occasioned by continuous use, as well as by the scarcity of maintenance personnel and materials; and, in some instances, the installation of equipment of a character or capacity suitable for war-time needs, which may or may not be useful in the public service when peace-time operation is resumed.

On the basis of these facts the commission has stated that it expects the public utilities to offset war-time costs against war-time revenues, to the end that depreciation now being suffered, and maintenance now being deferred, shall not be offered as arguments in support of postwar rate increases, or to prevent postwar rate reductions.

The fact that many war-time inventions have peace-time applications and thereby speed the obsolescence of prewar devices is recognized, as well as the fact that the industry may require large quantities of cash when the war is ended to provide newest equipmnet and modern service.

The commission, therefore, has issued the following declaration of policy:

> (a) That it is imperative that public utilities maintain a strong financial position throughout the war emergency, to the end that they may render prompt and uninterrupted service during said emergency and that they may enter the postwar period prepared to promptly take up the matter of deferred maintenance and the rehabilitation of their properties.
>
> (b) That the commission deems it inadvisable to institute formal investigations into the reasonableness of existing rates which appear to be producing increased earnings as the result of an artificial economic situation created by war conditions.
>
> (c) That the commission invites the coöperation of all public utilities in refraining from the payment of dividends or owners' salaries materially higher than similar payments in peace time to the end that cash may be conserved to adequately meet postwar conditions; but that without such coöperation the only alternative left to the commission is to institute an investigation into the rates, depreciation, and maintenance practices and other related affairs of any public utility showing abnormal earnings.

Commissioner Buchanan dissented, expressing the opinion that postponement of action on excess earnings is a violation of law. *Re Earnings During War Emergency.*

Damages for Discriminations

A TEXAS court held that electric power and light companies could not recover damages because of a company's unlawful discrimination against them by charging them at franchise power rates for power only while illegally charging other customers situated in similar circumstances the same rates for both power and light, where the latter were not competitors of the consumers discriminated against.

Discrimination against certain customers by charging them for power only at published rates while illegally charging other customers the same rates for both power and light, although discriminatory, was held not to constitute an overcharge which could be used as a measure of damages, since an overcharge means a charge of more than is permitted by law. *Texas Power & Light Co. v. Cousal et al. 170 SW(2d) 278.*

Town Not Required to Continue Service Beyond Corporate Limits

UPON the filing of a complaint by the town of Whitehall alleging that it had been furnishing service for several years beyond corporate limits without legal authority and asking the commission to direct that it cease operations beyond corporate limits, the Montana commission held that it had no jurisdiction either to compel the town to furnish service or to prevent it from discontinuing service, and, since the town desired to discontinue the same, no order of the commission was necessary.

Continuance of the extension, the town asserted, would impose upon taxpayers a burden of operating a utility at a loss, and if it were to replace the extension, which was wearing out, the operation thereof would be at a loss and a burden upon the taxpayers.

It was said to be a well-recognized rule of law followed by the Montana Supreme Court that a city or town has only such authority as is conferred upon it by express legislative declaration or necessary implication; and where there is a fair and reasonable doubt as to the existence of a legal power, it must be resolved against the municipality and the power denied. Power had been granted to the town to supply water to its inhabitants, the commission held, but no power was granted to furnish water to persons outside of the corporate limits.

The commission declared that it had no authority or jurisdiction to compel a municipality to do something which it cannot legally do. The commission also added that even if the town possessed power to extend its water supply service beyond its corporate limits, it could not be compelled to do so at a loss, and, if the commission should undertake to compel such operation, it would be depriving the town and its taxpayers of property without due process of law. *Whitehall v. Roe et al. (Report and Order No. 1808, Docket No. 3410).*

Customers Not Intervening Are Entitled to Reparation

A CONTENTION that customers who had not become parties to a reparation proceeding were barred from an award of reparation was overruled by the Pennsylvania commission. The utility company alleged that no reparation should be awarded to the patrons affected by the rate order if they had not filed a complaint or petition within the time limit prescribed by law.

The commission quoted from its decision in Manning *v.* Newville Water Co.

(1933) 111 Pa Super Ct 229, 3 PUR(NS) 370, 169 Atl 254, where it was said that the commission was created not only for the protection of the service company but also for the consumer, and that an order of the commission declaring that a proposed rate was unjust and unreasonable redounds to the benefit of every consumer who has paid an unreasonable rate, regardless of whether he has joined as a complainant.

Under this holding, the commission held, all the patrons of the company paying rates found to be excessive are entitled to reparations for a period fixed in accordance with the decision in Cheltenham & A. Sewerage Co. *v.* Public Utility Commission (1942) 344 Pa 366, 43 PUR(NS) 477, 25 A(2d) 334. The commission said it need not therefore consider the effect of the Public Utility Law provision that "any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility."

The commission continued:

> The practice under Article V, § 5, of the Public Service Company Law accorded with our interpretation of the controlling rule, as evidenced by the commission decision in Allday *v.* Chambersburg Gas Co. (1937) 16 Pa PSC 566, 583, 20 PUR(NS) 329, wherein reparations were ordered paid "to all and every consumer" who had paid the excessive rates.
>
> As a practical matter, it is clear that record identification of consumers entitled to reparation is very helpful to proper and speedy determination, and it is also obvious that the avoidance of an avalanche of individual consumer petitions separately filed is very desirable.

Davis et al. v. Cheltenham & Abington Sewerage Co. (Complaint Docket No. 10967).

Company Not a Public Utility after Losing Property On Foreclosure

A PETITION by bondholders of the Frackville Sewerage Company seeking to restrain the delivery of $15,000 of bonds of the company to three lawyers allegedly in payment for services was dismissed by the Pennsylvania commission for lack of jurisdiction. The petitioners sought commission action under statutes relating to the registration of securities and obligations of public utilities.

The company some years ago had issued bonds but had defaulted in the payment of interest on the bonds. Foreclosure took place in 1938 under the mortgage and ultimately all the assets except the charter and some accounts receivable were sold at public auction. Under these circumstances the commission held that the company was not a "public utility" as defined in the Public Utility Law, and, therefore, the commission could not exercise its jurisdiction to void securities issued in violation of the statute relating to registration of securities "by every public utility."

A public utility, it was pointed out, must own or operate equipment or facilities used in rendering any of the designated services. This company neither owned nor operated any equipment or facilities. It had been divested of them involuntarily by foreclosure. Its charter and accounts receivable were not "equipment or facilities."

Reference was made to the decision in New Street Bus Co. *v.* Public Service Commission (1921) 271 Pa 19, PUR1922A 404, 114 Atl 378, where it was held that the term "facilities" cannot be applied to passive lessor companies. Attention was also directed to a ruling in Swarthmore *v.* Philadelphia, M&S Street R. Co. (Pa 1921) PUR1921E 252, where it was held that a railway that had leased all of its property did not come under the jurisdiction of the commission. *Re Frackville Sewerage Co.*

Other Important Rulings

THE Wisconsin commission, in authorizing an increase in municipal water rates, ruled that it was without jurisdiction to establish a rate on a retroactive basis. *Re City of Wauwatosa (2-U-1884).*

Upon a showing that the Indiana commission had held a hearing and entered an order or orders approving the sale of the physical assets, franchises, and permits of Indiana Gas Utilities Company to the Terre Haute Gas Corporation, the supreme court of Indiana held that no good purpose would be served by requiring the parties to restore the status quo ante as ordered by the judgment of the Clay Circuit Court, which had been affirmed by the supreme court in Terre Haute Gas Corp. *v.* Johnson (1942)— Ind —, 47 PUR(NS) 115, 45 NE(2d) 484; and the court directed that the mandate be modified by striking from the final judgment the part requiring Terre Haute Gas Corporation to reconvey to Indiana Gas Utilities Company all of the property attempted to be sold and conveyed pursuant to a former commission order held by the court to be invalid. *Terre Haute Gas Corp. et al. v. Johnson et al. 48 NE(2d) 455.*

The Supreme Court of the United States has held that competitive conditions which would justify and render nondiscriminatory a reduction in the line-haul tariff on a particular route would likewise justify a reduction and render it nondiscriminatory if made in the loading charge instead, and it was held that the commission may look at the whole of the railroad services rendered to different shippers to determine whether the conditions are such as to justify a difference in loading charges. *L. T. Barringer & Co. v. United States et al.*

Intrastate commutation rates of an interstate railroad were held by the Supreme Court of the United States not to be affected by an order of the Interstate Commerce Commission authorizing a nation-wide increase in passenger rates, in view of the fact that a prior order increasing such rates restricted the increase to the 2-cent per mile maximum prescribed by state law, and in view of the Interstate Commerce Commission's disclaimer of any intention to override the state law by the order. *Illinois Commerce Commission et al. v. Thomson, Trustee.*

The United States Supreme Court held that one whose operation as a contract carrier by motor vehicle on July 1, 1935, was in the service of a particular type or class of shippers for whom he transported goods of a miscellaneous character was not entitled, under the "grandfather clause" of the Motor Carrier Act, to a permit entitling him to haul the same items in the specified territorial limits for anyone who might choose to employ him. *Noble v. United States.*

The New York commission, in a proceeding relating to the rates of a power company, held that excavation in connection with structures has no useful value without such a structure and should be treated as an item of the cost of construction of the structure and should be depreciated in harmony with the structure itself. The commission further disapproved the theory that because wire in distribution and transmission systems appears to be in good condition, there is no depreciation in the wire, since depreciation is intended to represent the expired service life and wire does not remain in service in the lines indefinitely and to infinity. *Re Deer River Power Co. (Case 10058).*

The Kentucky Court of Appeals held that the Public Service Commission Act did not deprive municipalities of the power to require public utilities to place wires underground and to remove from the streets all poles on which wires are strung. *Benzinger et al. v. Union Light, Heat & Power Co. 170 SW(2d) 38.*

Discontinuance of a station agency, according to the Colorado commission, is a matter of managerial discretion, and, unless the management acts arbitrarily in the exercise of such discretion, the commission cannot interfere with its decision. *Re Chicago, Burlington & Quincy R. Co. (Investigation and Suspension Docket No. 247, Decision No. 20817).*

Certificates of public convenience and necessity, according to a statement of the supreme court of Ohio, are granted for the benefit of the public and not the recipients of the certificates, and anticipated benefits to the applicants or possible detriment to other certificate holders are only incidental and secondary. *Adams v. Public Utilities Commission, 47 NE(2d) 773.*

Mere proof of an agreement between a contract motor carrier and a shipper for the carriage of materials does not afford a sufficient basis for the granting of a permit for such carriage over the protest of an existing common carrier who is ready and prepared to meet adequately and satisfactorily the needs of the shipper, according to a ruling of the supreme court of Ohio. *Jones v. Public Utilities Commission, 47 NE(2d) 780.*

A consignee of freight, according to a ruling in Indiana, becomes liable for the payment of freight charges when he accepts delivery of the goods whether the charges are demanded at the time of delivery or at a later date, and such liability may be incurred when there is no physical delivery to the consignee or when there is constructive delivery as when the consignee reconsigns the shipment. *Pennsylvania Railroad Co. v. Mathias (F. E.) Lumber Co. 47 NE(2d) 158.*

Authorizing a railroad to discontinue agency service at a station and to substitute custodian service, the Wisconsin commission stated that the financial condition of a railroad station is not the sole consideration, but other factors must be considered such as proximity of the next open station; highway and telephone connections between the station and next open station; motor carrier service to and from the community affected; number and character of trains serving the station; nature of the area served by the station; the trend of the business at the station and reasons therefor; effect of the closing on mail, telegraph, and express business; efforts of the railroad to retain or increase business at the station; and prospects of increased business. *Re Thomson (Chicago & Northwestern Railroad Co.) (2-R-1470).*

The supreme court of Kansas held that a person agreeing to transport property of another, for a consideration, by motor vehicle from points in Kansas to a destination in Colorado, under a contract requiring him to own and operate and have full control of his equipment including the drivers, to pay all expenses of operation, and to furnish his own liability insurance and Kansas state license tax, and the other person to furnish and pay for all other necessary permits, licenses, and mileage fees required by state law, is, in the performance of such contract, a contract motor carrier of property for hire within meaning and intent of the Kansas statute, and is required to have a contract carrier's license. *Roddy v. Hill Packing Co. 137 P(2d) 215.*

Where it was contended that the fact that a railroad itself was taking the bulk or all of the output of gravel shipped at a station and that this emphasized the necessity of maintaining an agent, the Wisconsin commission said that to hold that an agency must be maintained because the carrier itself creates the greatest part of the business is an encroachment upon the function of management which is not warranted unless adequate service to the public is impaired thereby. *Re Chicago, MStP&PR. Co. (2-R-1450).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 48 PUR(NS) NUMBER 5

Points of Special Interest

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TITLES

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Re Dedham & Hyde Park Gas & Electric Company

[D.P.U. 6895.]

Rates, § 181.1 — Increase during war — Cost of living — Earnings and cost.

A gas utility company should not be permitted to increase rates which would result in an increase in cost of living during war conditions, even though stockholders have endured a long period without dividends, when an increase in the cost of gas due to increased fuel cost is largely eliminated by fuel clauses contained in existing rate schedules, the company has recently carried increasing amounts to surplus, and the prospect is that earnings will continue to improve during the war.

[May 17, 1943.]

INVESTIGATION *of proposed increases in gas rates; proposed rates disallowed.*

By the DEPARTMENT: The schedules of proposed rates and charges for gas herein considered were filed with the Department on August 14, 1942, the same to become effective on September 1, 1942. The company represents that the schedules would increase its revenues approximately $22,000 and that the increase is necessary to enable the company to meet the progressively larger expenditures incident to the cost of doing business.

Subsequent to the filing of these schedules the Department entered upon an investigation upon its own motion as to the propriety of the rates and charges embodied therein and the operation of the schedules has been suspended from time to time, the last suspension voted being to June 1, 1943.

Public hearings were held by the Department on September 10, September 24, and October 8, 1942. The city of Boston and the town of Dedham, represented by the corporation counsel and the town counsel, respectively, and representatives in the general court and customers of the company registered protest to the proposed increase at the hearings. On October 20, 1942, the company served notice with the Director of Economic Stabilization that they proposed to make effective increases in its schedule of rates and charges for gas and consented to the intervention by the office of the director in the proceedings before the Department. The Department withheld its decision in the matter to enable the Office of Price Administration to give full consideration as to their position. On March 25, 1943, a letter was received from the Director of the Transportation and Public Utilities Division of said office, stating

that the office did not seek a formal hearing but that the "decision not to intervene should not be construed or interpreted as a consent to or agreement with any of the contentions advanced by the company in the proceeding before the Department." The body of the letter advanced the reasons for their opposition to the increase.

Although the proposed new rates provide for an increase in approximately 92 per cent of the monthly bills rendered by the company, about 7 per cent of the bills rendered would actually be decreased.

The estimated effect of the various changes in the rates and charges on the revenues of the company are as follows: Under the General Rate M.D.P.U. No. 18 a net increase in revenue of $21,330; Optional Rate (Refrigeration, etc.) M.D.P.U. Nos. 9 and 10, a net increase of $720; Kitchen Heating Rate M.D.P.U. No. 13, a net increase of $10; Space Heating Rate M.D.P.U. No. 16, a net decrease of $50; Building Heating Rate M.D.P.U. No. 15, a net decrease of $5, and the Commercial-Industrial Rate M.D.P.U. Nos. 2 and 12, a net decrease of $25.

The bulk of the increase falls on those domestic and commercial customers presently served under the General Rate. Over 90 per cent of the customers of the company are billed under this rate.

The proposed new General Rate increases the gross charge for the first 200 cubic feet per month from 77 cents to $1.05. In place of the existing charges of 14.5 cents gross per hundred cubic feet for the next 29,800 cubic feet per month, 14 cents for the next 70,000 cubic feet, 13.5 cents for the next 100,000 cubic feet, and 10 cents for the excess above 200,000 cubic feet, the new rate contains but two additional steps: 14.7 cents gross per hundred cubic feet for the next 1,800 cubic feet following the first two hundred and 13 cents gross per hundred cubic feet for all gas used in excess of 2,000 cubic feet per month. The company also proposed to change the present discount provisions of one cent per hundred cubic feet for the first 200,000 cubic feet used per month to a flat 5 per cent discount on the bill if paid within fifteen days.

There are considerable changes in the other proposed new rates, comprising both increases and decreases; but they affect a comparatively small number of customers and the net result is negligible.

The Dedham and Hyde Park Company supplies gas to customers in the Hyde Park section of the city of Boston, the town of Dedham, and a small part of the town of Westwood. The plant investment of the company on December 31, 1942, was $931,628. There is outstanding common stock of the par value of $500,000 with premiums paid in thereon of $52,845. As of December 31, 1942, the company had borrowings on open account of $220,000 from the New England Gas and Electric Association, upon which interest at the rate of 4 per cent per annum is now being paid. As of the same date the depreciation reserve was $249,480 and the surplus of the company showed a deficit of $67,462. This deficit has arisen as the result of operating losses in years prior to 1941.

An exhibit filed by the company at

the hearings shows that its operating losses from 1932 to 1940 amounted in all to $97,859. It further shows a decrease in consumption by general service customers from 22,100 cubic feet per year in 1932 to 13,950 cubic feet per year in 1940, with a drop in revenue per customer from $39.10 per year to $25 and a total revenue drop of $99,400. A portion of this decrease is made up by revenue received under new promotional classifications, such as water, kitchen, and space heating schedules, under which is included revenue for cooking, etc., formerly included in the revenue under the General Rate.

The company, like all gas companies in the commonwealth, has gone through a transition period and is still going through such a period. In order to hold its cooking and water heating customers it has made effective promotional rates in an effort to induce customers to use gas for all purposes. The effect of these new rates has been to increase considerably the number of cubic feet of gas sold, but at rates which have reduced the average revenue per thousand cubic feet of gas sold from $1.64 in 1932 to $1.21 in 1940.

The company showed net earnings of $8,189 in 1941 and $12,416 in 1942.

The net income for 1942 may be reduced below the above figure, as the company has been billed for property taxes by the city of Boston in an amount exceeding the amount accrued for the year by the company by $2,521.50, which will have to be charged against the income for 1942 if the company loses its pending appeal before the appellate tax board. There is also a Federal income tax credit of $1,171.21 resulting from the inclusion of the company's net taxable income in the Consolidated Income Tax Return of the New England Gas and Electric Association, which may or may not recur. The fact, however, remains that the earnings of the company for 1942 exceeded the earnings for 1941 after the payment of increased costs. The gross increase in revenue of $36,871 in 1942 exceeded the amount estimated by the company under the proposed new rates, due to the inclusion of a fuel clause and increased sales. The cost of purchased gas increased $29,818 for the same reasons, and because of the increase in gas unaccounted for, hereinafter referred to. New business expense decreased from $21,623 in 1941 to $13,043 in 1942. Depreciation charged to operating expenses increased from $17,700 in 1941 to $22,857 in 1942. Under the policy of the company to charge for depreciation a percentage of revenues less maintenance, the increase in revenue caused the sharp rise in the depreciation account.

The company experienced a large increase in gas unaccounted for, from 3.96 per cent in 1941 to 7.62 per cent in 1942. The increased percentage of loss in gas wiped out a substantial portion of the increase in revenue. No explanation appears for it in the record. If by greater care in operation this loss can be reduced in 1943 and subsequent years, the net revenue of the company can be substantially increased.

In any investigation of the rates of the Dedham and Hyde Park Gas and Electric Company the purchase of gas by the company from the Worcester

Gas Light Company must be considered, as the purchased gas represents over 50 per cent of the total operating expense.

Prior to 1927 the Dedham and Hyde Park Company purchased its gas requirements from the Boston Consolidated Gas Company and a predecessor company as far back as the year 1900. The original contract called for purchases not exceeding 40,000,000 cubic feet per year at 30 cents per thousand cubic feet for a period of twenty-five years. A second contract was entered into in 1918 for gas in excess of 40,000,000 cubic feet at a price of 58½ cents, which price increased by July of 1920 to 92½ cents. In 1925, at the expiration of the original contract, a new contract was approved by the Department for the purchase of all requirements at a price of 77½ cents per thousand cubic feet, which represented the average price then being paid under both of the old contracts. On December 15, 1927, the company entered into a 20-year contract with the West Boston Gas Company (now Worcester Gas Light Company). The original cost of gas under this contract of 75 cents per thousand cubic feet has been subsequently reduced, so that the average price paid to Worcester from 1934 to 1938, inclusive, was 65 cents. A further reduction was effected in 1939, so that the average price in 1942, as shown by the Dedham and Hyde Park company's report for that year, was 54.9 cents per thousand cubic feet. This we are not prepared to find, upon the evidence before us, to be excessive, in view of present production costs, limited production capacities, and uncertain sources and quality of fuels.

The Commission recognizes that the stockholders of this company have endured a long period without dividends, but finds itself unable to approve the rates proposed at this time. The tendency of the proposed changes in rates is to increase the cost of living during present war conditions. While this Department is bound by established principles of utility regulation rather than any new principles laid down by the Federal government, it nevertheless desires to coöperate in the prosecution of the war and not to increase the cost of any commodity or service unless failure to do so would involve undue hardship upon the utility concerned. The prospect that this utility may suffer hardship as the result of increase in the cost of gas due to increased fuel costs is largely eliminated by fuel clauses now contained in its existing rate schedules. During the past two years this company has carried increasing amounts to surplus. The prospect is that its earnings will continue to improve during the war. Because of the foregoing, it is our feeling that the company, during the existence of this improving situation and in time of war, should not increase its existing rates. Should the net revenue of the company show a tendency materially to decrease instead of to increase, doubtless the filing of new schedules of rates might be in order.

Therefore, after notice, public hearing, investigation, and consideration, it is

Ordered: That the proposed rates, as set forth in schedules M.D.P.U. Nos. 18, 19, 20, 21, 22, and 23, filed

with the Department on August 14, 1942, be and the same hereby are disallowed; and it is

Further ordered: That the investigation herein be and the same hereby is closed.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Wisconsin Telephone Company

[2-U-1816.]

Rates, § 649 — Notice to Office of Price Administration — Special appearance.

1. The Office of Price Administration is deemed to have had actual notice of a change in classification of telephone service which an applicant seeks to apply when such administration has made special appearances at hearings in the case, p. 263.

Rates, § 550 — Telephones — Residence or business classification — Schools.

2. Principal attention must be given to the question of whether telephone service furnished to schools is analogous to residence or business classification in order to determine the reasonableness of a classification, p. 265.

Rates, § 545 — Telephones — Residence or business classification — Volume of use — Character of use.

3. Two broad factors are given consideration in determining whether telephone service is analogous to business or residence service: (1) the volume of use and (2) the character of use, p. 265.

Discrimination, § 158 — Telephone rates — Classification of schools — Residence or business.

4. Continuation of a classification under which public and parochial grade and high schools in a city are classified as residence rather than business subscribers of a telephone company constitutes an unreasonable and unjust discrimination in favor of the schools, and adverse to other subscribers, when it is evident that the school system is a substantial enterprise for which telephone service is essential to carry out effectively the many administrative and clerical duties commonly associated with the operation of undertakings of such magnitude; that telephone service to schools is not similar to service rendered residence subscribers; and that such service is reasonably comparable to the business service classification, p. 265.

Discrimination, § 158 — Telephone rates — Residence service to some schools.

5. A classification under which public and parochial grade and high schools are classified as residence telephone subscribers is unjustly discriminatory in itself, as applying only to a limited group of schools to the exclusion of private grade and high schools as well as other educational institutions which cannot qualify for the special classification, p. 267.

Rates, § 1 — What constitutes increase — Incidental reclassification.

6. An application for reclassification of schools as business rather than residence subscribers of a telephone company, involving a total probable

revenue increase amounting to a very small percentage of the aggregate revenue (approximately one-tenth of 1 per cent) and not resulting in any appreciable change in the earnings at the exchange, is not an application for an increase in rates, as any increase in revenue due to the classification change is merely incidental, p. 267.

[May 17, 1943. Rehearing denied June 19, 1943.]

APPLICATION *by telephone company to reclassify public and parochial schools, libraries, museums, and certain other educational institutions as business service subscribers; reclassification approved.*

By the COMMISSION: Under date of March 5, 1942, Wisconsin Telephone Company pursuant to the provisions of § 196.20, Statutes, filed proposed changes in the rate schedule applicable at its Milwaukee exchange. The applicant proposed to eliminate a special classification of service filed for public and parochial grade and high schools, which is also being applied to some other educational institutions, libraries, and museums, and to apply in lieu thereof its regular business service classification.

Hearings were held at Milwaukee April 1 and 2 and July 23, 1942, before Examiner W. A. Anderson; November 20, 1942, before Examiner Calmer Browy; and January 25, 1943, before Commissioner W. F. Whitney and Examiner W. A. Anderson.

APPEARANCES: Wisconsin Telephone Company, by Francis J. Hart and Chester Krizek, Attorneys, Milwaukee; city of Wauwatosa, by Roy R. Stauff, City Attorney, Wauwatosa; School District No. 1 of the village of Whitefish Bay, by George H. Gabel, Attorney, Milwaukee; School District No. 11, town of Greenfield State Graded School, by Mrs. Clara E. Harrington, District Clerk of the School Board, West Allis; State Teachers College, Milwaukee, by F. D. Baker, Milwaukee; Board of Education, West Allies, by Mrs. Louise Sturm, West Allis; Milwaukee University School, by Alfred E. Everett, Milwaukee; village of West Milwaukee by Edmond H. Lemay, Director of the School Board, West Milwaukee; city of West Allis, by John C. Doerfer, City Attorney, Milwaukee; village of Shorewood School Board, by A. J. Benzing, Secretary, Milwaukee; village of West Milwaukee, by Senator Allen J. Busby, Milwaukee: Milwaukee School Board, by Harry B. Meissner, Chairman of the Finance Committee, Milwaukee: of the Commission staff, H. T. Ferguson, Counsel, H. J. O'Leary, Chief, Rates and Research Department, and K. J. Jackson, Rates and Research Department; city of Milwaukee, by Walter J. Mattison, City Attorney, by Joseph L. Bednarek, Assistant City Attorney, Milwaukee, Walter Rilling, Secretary of the Milwaukee School Board, Milwaukee, and William Boyd, Purchasing Agent; Archdiocese of Milwaukee, by Rev. E. J. Goebel, Superintendent of Catholic Schools, Milwaukee; Office of Price Administration, by Bruno V. Bitker, State Counsel, and Thomas E. Fairchild, Assistant

State Counsel, Milwaukee; Milwaukee School Board, Milwaukee Vocational School, by Walter Rilling, Secretary, William Boyd, Purchasing Agent, Milwaukee School Board, Robert Otis, Business Manager, and Milwaukee Vocational School; Milwaukee County Pharmacists Association, by Herbert L. Mount, Attorney, Milwaukee.

Briefs were filed by Messrs. Hart, Bednarek, and Gabel. Oral arguments by Messrs. Hart, Bednarek, and Fairchild were heard by Chairman R. W. Peterson and Commissioner W. F. Whitney at Madison on March 31, 1942.

The Office of Price Administration entered a special appearance at both the November 20, 1942, and the January 25, 1943, hearings for the purpose of calling attention to the so-called Second Price Control Act (Act of Congress approved October 2, 1942, Public Law 729—77th Congress, Chapter 578, 2nd Session) and to Procedural Regulation 11 of the Office of Price Administration.

When the matter was argued orally the representative of the Office of Price Administration took the position that the granting of the request of the applicant would constitute a general rate increase under the terms of the act and that an order of the Commission granting the application could not be made effective since the notice required by the act had not been served upon the Office of Price Administration by the applicant.

Because of our findings herein it is unnecessary for us to consider the merits of the two principal issues raised by the Office of Price Administration, namely, the lack or sufficiency of notice, and whether the proposed changes constitute a "general" increase within the meaning of the Price Control Act.

[1] The application in this proceeding was filed on March 5, 1942, seven months before the passage of the Second Price Control Act on October 2, 1942. Before the passage of the act hearings were held on April 1 and July 23, 1942, at which all of the direct testimony and most of the cross-examination were placed in the record. However, when the Office of Price Administration appeared at the November 20, 1942, hearing an adjournment was taken at its request to permit the Office of Price Administration to familiarize itself with the record. In fact, further hearing was deferred until January 25, 1943, more than two months thereafter. It should also be pointed out that no objection has been raised by any party to the intervention of the Office of Price Administration.

We are satisfied that we have afforded ample time and opportunity for the parties to do whatever was necessary to comply with the act. In any event responsibility for compliance with the act rests with the applicant. In view of its special appearances it cannot be said that the Office of Price Administration has not had actual notice of the change in classification of service which the applicant seeks to apply. We therefore proceed to consideration of the application on its merits.

Soon after the enactment of the Public Utilities Law July 9, 1907, the then Railroad Commission instituted a state-wide investigation involving all telephone companies for the pur-

pose of determining whether telephone rates for service and the application of such rates were in contravention of the law. In its decision of June 12, 1908, in Re Free and Reduced Rate Telephone Service, the Commission recognized two main classifications of telephone service; namely, "business" and "residence" and also provided that certain sub or special classifications were permissive.[1] Accordingly, the applicant established the following classification which, except for modifications which have eliminated its applicability to certain other educational institutions has been continuously in effect since 1908.

Public and Parochial Grade and High Schools

One-party service—Same rate as one-party residence

Party-line service—Same rate as party-line residence

Extension telephone—Same rate as residence extension

Table I sets forth in detail the present rate classification and the number of central office lines in service at schools in the Milwaukee exchange area entitled to the special classification, together with similar data for other schools and institutions which have for some reason been permitted to receive service under the special classification or at reduced rates.

Table I discloses facts evidencing serious misapplication of the existing special classification. Thus, public libraries, museums, vocational schools, and the state teachers college have been served at rates supposedly within the special classification. By its own terms, the special classification obviously should not have been applied to the classes of customers above enumerated. Furthermore, the company in addition to improperly classifying some customers, misapplied its rates to certain customers which were included in the classification. As shown in Table I [omitted here] some customers have been charged business rates, while others have been charged residence rates. In some cases pri-

[1] 2 Wis RCR 521, 542. "Finding 2. The classification of telephone subscribers into 'residence' and 'business' subscribers, with higher rates for the latter than for the former, is lawful and permissible, not only from the point of view of the greater cost of providing the business service, but also because of the coördinate principle that a lower residence rate is necessary in order that a sufficiently large number of subscribers may be secured to make the telephone valuable to business subscribers. It follows that an extension of this classification may be made so as to make special provision for schools, hospitals, churches, lodges, Christian associations, and similar bodies and organizations, provided that the two principles of cost and of service to other subscribers are continually kept in view. A uniform treatment of all of these institutions for the entire state is impracticable, for the reason that the telephone in a church or lodge in one locality may be used as much as a business telephone, when it should be charged a business rate, while in another it may scarcely be used at all, when it can properly be charged a rate materially less than the residence rate. It should, therefore, be left to each individual telephone company to make such a classification of these institutions in each case and to charge such a rate as most nearly accords with the actual service furnished and required, and bearing a proper relation to its basal residence and business rates.

"In cases where the persons or administrative bodies having jurisdiction over this class of institutions—schools, churches, hospitals, lodges, etc.—do not elect to subscribe for a telephone in such institution, it is permissible for telephone companies to install a 'pay telephone,' if in their judgment it is in the general interest of the service to do so. Certain classes of telephone service to newspapers, especially toll service, apparently require special consideration because of competitive and other conditions.

"The classifications and subclassifications suggested above should be regarded as permissive and in no sense as mandatory. Whether or not a classification shall be made in one way or another, depends upon the character of the service provided, the conditions under which it is provided, and the cost of providing it.

"Great care should be exercised in all classification in order to avoid unjust discrimination."

vate branch exchange trunk line service has been billed at residential flat rates, despite the fact that the company's lawfully filed schedule of private branch exchange rates makes no provision for the application of residence flat rates to trunk lines. Finally, it is apparent from Table I that certain schools have been paying business rates, and in so far as the record shows have not been given the option of obtaining service at the lower rate provided in the special classification.

The administration of rates to the customers in question has been lax and arbitrary resulting in undue preferences to some and undue burdens to others.

[2–4] Apparently when the present special classification was originally established thirty-five years ago, it was the past four decades many changes have taken place in the operation and administration of the educational system in Milwaukee. The reasonableness and propriety of the special classification must be judged in the light of present conditions relating to the use of telephone service. To determine the reasonableness of the classification at the present time principal attention must be given to the question of whether the service now furnished is analogous to the residence or business classification.

Two broad factors are given consideration in determining whether the service rendered is analogous to business or resident service; (1) the volume of use and (2) the character of the use. Table II below shows the volume of usage within the classification as compared with the average usage throughout the exchange.

TABLE II

	Residence		Business Measured Rates				
		1-Party	1-P'ty	1-P'ty	1-P'ty	2-P'ty	
Originating Local Messages Per Line Per Day	Flat Rate	Measured Rate	Business	Semi-Public	Coin Box	Coin Box	Rural Flat Rate Residence Business
Milwaukee exchange average	7.4	2.2	6.9	5.45	3.64	2.42	No data
Milwaukee public schools	12.01	2.81	7.22	2.79	2.86	2.05	
Cudahy public schools	11.16	....	....	....	....	....	
Fox Point schools	15.16	....	....	....	....	....	
Shorewood public schools	21.01	....	....	....	....	....	
Wauwatosa public schools	21.43	....	19.81	5.36	....	....	
West Allis public schools	11.30	....	....	.91	....	....	
West Milw. public schools	15.80	....	....	....	....	....	
Whitefish Bay public schools	146.5	....	10.26	6.49	....	....	
Schools in county	....	4.54	7.45	2.68	1.00	1.42	No data
Parochial schools	....	5.03	5.73	3.64	3.24	1.31	

presumed that the character and use of service by the schools included within the classification was comparable to residential service. As a matter of fact, one of the reasons cited in support of the special classification was to acquaint the general public and particularly householders with the use of telephone service. However, during

From the foregoing it is apparent that the use of service by schools charged the residence flat rate is materially greater than the average usage by residential customers throughout the exchange. In the case of service furnished under the business rate, except for Wauwatosa Public Schools, the usage appears fairly comparable

with the average by business subscribers. The city of Milwaukee contended that the comparison in Table II is not truly representative, primarily because a considerable number of war activities have been centered in school buildings which has resulted in an increase in the use of the service over and above normal usage. A check of the data indicates that the calling rates used were compiled prior to the outbreak of war, or immediately thereafter. Consequently, it is doubtful whether war activities had any appreciable effect on the average calling rate. By and large these data indicate that the volume of use of service is not analogous to residence use.

It is difficult to determine the character of the use of the telephone service of any subscriber or group of subscribers but the testimony in this case indicates that at least in the city of Milwaukee, the kind of use made of school service is quite similar to that of business establishments generally. The city of Milwaukee, on the other hand, contends that service usage at schools where the special classification is applicable is analogous to household usage. The evidence is undisputed that the telephone service in Milwaukee schools is not installed for social purposes. In fact, the use of the service for social purposes is discouraged and in most cases forbidden. The usage of telephone service in the schools logically falls in three general categories: administrative, academic, and extracurricular. All are directly related and similar to business usage in one form or other. It is clearly evident that the Milwaukee school system is a substantial enterprise and that like any business comparable in size, telephone service is essential to carry out effectively the many administrative and clerical duties commonly associated with the operation of undertakings of such magnitude.

In our opinion the evidence in this proceeding has clearly demonstrated that telephone service furnished Milwaukee schools is not similar to service rendered residence subscribers. Obviously, the telephone services in question are not located in residences so that, on the basis of the location of the subscribers' instruments, the schools would not qualify for residential service. The evidence as to volume, character, and location of use does not support the proposition that telephone service rendered schools should be furnished under a special rate classification. In so far as these factors affect the classification of service furnished both public and parochial schools in the city of Milwaukee, the weight of the evidence is convincing that such service is reasonably comparable to the business service classification. No evidence was offered in the record as to the character of the use of telephone service by schools outside of Milwaukee but located within the Milwaukee exchange area. However, the evidence as to the volume of use, the known facts as to location of the service, together with the reasonable presumption, in the absence of evidence to the contrary, that character of use is not substantially different, all lead to the conclusion that suburban schools within the Milwaukee exchange area should be classified the same as the schools in the city of Milwaukee. We feel that a continuation of the present classification constitutes an unreasonable and

unjust discrimination in favor of the schools affected and adverse to other subscribers of the company.

[5] There appears to be no question but that the classification as filed is unjustly discriminatory in itself. The classification applies only to a limited group of schools. Private grade and high schools as well as various other educational institutions cannot qualify for the special classification. True, this discrimination could be removed by revising the classification to such institutions but, as previously stated, it is our opinion that there is no justification for such special classification.

[6] It is estimated that if business rates were applied to all schools now receiving service at rates authorized in the special classification, the annual revenues of the applicant would be increased from a minimum of $4,454 to a maximum of $7,600 per year. The exact amount cannot be determined because of the effect of the measured service feature of the business rates upon the volume of use. Additional revenue increases approximating $3,000 per year will likewise result from the reclassification of institutions now improperly classified. The total probable revenue increase is a very small percentage of the aggregate revenue in the Milwaukee exchange (approximately one-tenth of 1 per cent) and will not result in any appreciable change in the earnings at that exchange. Any increase in revenue due to a change in classification is merely incidental to the purpose of this hearing; therefore, this matter is not considered by us as an application for an increase in rates.

The Commission finds:

That the present special classification which provides for the application of residence service rates to telephone service furnished public and parochial grade and high schools at the Milwaukee exchange of Wisconsin Telephone Company is unreasonable and unjustly discriminatory.

ORDER

It is therefore *ordered:*

That the application of the Wisconsin Telephone Company for authority to eliminate the special classification filed for public and parochial grade and high schools and to apply the business service classification in lieu thereof at its Milwaukee exchange be and is hereby granted effective the first billing period subsequent to the date of this order.

FEDERAL POWER COMMISSION

Re Interstate Natural Gas Company, Incorporated

[Docket Nos. G-132, G-149, Opinion No. 91.]

Gas, § 2.1 — Jurisdiction of Federal Commission — Exemption of sales in "production and gathering."

1. Sales of commingled, purchased, and gathered gas by a natural gas

company to pipe-line companies for ultimate public consumption in other states are not exempted from the jurisdiction of the Federal Power Commission by § 1(b) of the Natural Gas Act, 15 USCA § 717(b), as sales in the "production and gathering" of gas where the natural gas company, transporting the gas to points of delivery, does not consider its transportation lines as something separate from its field lines and the pipe lines are operated as a unit; production and gathering is distinguished from sale, p. 272.

Return, § 11 — Basis — Actual legitimate cost — Adjustments.

2. The rate base of an interstate natural gas company was held to be the actual legitimate cost of the property, including construction work in progress used and useful in furnishing service, less existing depletion and depreciation, plus necessary working capital, p. 274.

Valuation, § 101 — Accrued depreciation — Observed deterioration.

3. The observed deterioration method of determining accrued depreciation of natural gas property is inherently fallacious in that it confuses the appearance or physical condition of property with true depreciation, which is the using up of its economic or service life, and it does not give consideration to all factors contributing to the retirement of property; hence it cannot reflect the actual existing depreciation, p. 275.

Depreciation, § 26 — Annual and accrued — Consistency.

4. Annual depreciation expense and accrued depreciation are merely two phases of the same phenomenon, and they must be determined consistently or grave injustices will result, p. 275.

Depreciation, § 39 — Reserve requirement.

5. The required depreciation reserve of a natural gas company at any given time is the accumulated amount of proper annual provisions for depreciation, less the cost of property retired, p. 275.

Valuation, § 104 — Accrued depreciation — Depletion and depreciation reserve requirement.

6. The required depletion and depreciation reserve, but not an excessive book reserve, of a natural gas company is the best measure of actual existing depletion and depreciation in the properties, p. 275.

Valuation, § 224 — Construction work in progress.

7. An amount representing construction work in progress, practically all of which represents the cost of plant placed in service before the end of the year under consideration, or was placed in service shortly thereafter, should be included in the rate base, p. 277.

Valuation, § 225 — Estimated capital additions.

8. Estimated capital additions to plant primarily designed to meet increased demands for gas should not be included in the rate base when the revenues from a predicted increase in business as a result of such additions are not reflected in the test period of operations for rate making, p. 277.

Valuation, § 289 — Working capital — Elements.

9. Working capital of a natural gas company consists of two chief elements, materials and supplies needed in the business and cash necessary to meet operating expenses from day to day pending collection of revenues, p. 277.

Valuation, § 296 — Cash working capital — Relation to operating expenses.

10. Cash working capital of a natural gas company is properly related to

operating expenses, since the cash necessary to run the business is that which must be available to meet current expenses during the lag between the time of rendering service and collection of revenues, p. 277.

Valuation, § 290 — Cash working capital — Bank balance requirements — Tax accruals.

11. No additional amount should be included in cash working capital of a natural gas company for the purpose of maintaining bank balances when taxes are accrued and, in effect, collected from customers long before they have to be paid by the company and these tax accruals in excess of payments will supply adequate bank balances, p. 277.

Return, § 24 — Reasonableness — Factors considered.

12. The return of a public utility should equal that generally being made at the same time in the same region on investments in other enterprises attended by corresponding risks, and the return should be sufficient to assure confidence in the financial soundness of the utility and to maintain its credit and enable it to attract the capital necessary for the proper discharge of its public duties, but a utility has no constitutional right to profits such as are realized by highly profitable enterprises or speculative ventures, p. 278.

Return, § 101 — Natural gas company — Established business.

13. Six and one-half per cent was held to be a fair annual rate of return upon the rate base of a well-established natural gas company whose risks had been minimized by ample past and present provisions for depletion and depreciation with current high profits and by many established markets, p. 278.

Rates, § 194 — Interstate and intrastate business — Allocation — Classes of service.

14. Resort to allocations is necessary for the purpose of determining just and reasonable rates of the business subject to regulation under the Natural Gas Act when properties are used in transactions over which the Federal Power Commission has jurisdiction as well as those beyond its jurisdiction, and where they are also used to render service to customers with varying load and other characteristics, p. 279.

Apportionment, § 4 — Methods — Reasonable cost of service.

15. A method of allocation which allocates the return along with operating expenses, denominated the "reasonable cost of service method," is more practical and easier to understand and apply than the method whereby an allocation is made of the cost of physical property and of operating expenses, p. 280.

Apportionment, § 31 — Natural gas costs.

16. Operating costs and return of a natural gas company are distributed in two categories: those which relate to production and purchases and those which relate to transportation and delivery; and costs relating to transportation and delivery are in turn divided as between demand and volume costs, p. 280.

Apportionment, § 9 — Fixed costs — Variable costs — Natural gas company.

17. Fixed costs of a natural gas company are associated with demand and variable costs with volume, but an exception to this rule relates to return, Federal and state income taxes, and Federal capital stock taxes, which should be allocated on the theory that a part of the return or profits should

naturally come from the volume of business and a part from the customers' demand, that is, the capacity of facilities required to render service, while income taxes and capital stock taxes are associated with return and are, therefore, allocated in the same manner, p. 280.

Apportionment, § 20 — Production or purchase of gas.

18. Costs relating to the production or to the purchase of gas by a natural gas company, including the operation of field lines, are classified as volume or commodity costs only, p. 280.

Apportionment, § 9 — Transportation and delivery costs — Natural gas.

19. Transportation and delivery costs associated with demand are allocated in proportion to each customer's responsibility for the peak-day demand for gas, and such costs associated with volume are allocated in proportion to volume or to the volume of gas sold to each customer, p. 280.

Expenses, § 114 — Federal income taxes.

20. The applicable Federal income tax rate for 1941 (selected as a typical year affording the latest available data) was used in calculating tax requirements of a natural gas company for rate making in 1943, where the record indicated that business would be increased sufficiently to provide for the additional tax under recently enacted higher tax rates, p. 282.

[April 27, 1943. Rehearing denied June 9, 1943.]

COMPLAINT *by Louisiana Commission against rates of Interstate Natural Gas Company consolidated with Commission's own general investigation of rates; rate reductions ordered. Opinion and order modified June 9, 1943, by excluding item of $8,762 appearing at page 32 of the opinion (page 283 here) applying to distribution companies in Mississippi and Louisiana outside of New Orleans, upon finding that reduction in rates to such companies resulting from schedules made effective August 1, 1942, represents compliance with Commission's order; and total ordered annual reduction of $1,100,345 reduced to $1,091,583. Petition for rehearing denied.*

APPEARANCES: William A. Dougherty and C. W. Cooper, New York, Henry P. Dart, Jr., and H. Grady Price, for Dart and Dart, New Orleans, Louisiana, and Alden T. Shotwell, for Shotwell & Brown, Monroe, Louisiana, for Interstate Natural Gas Company, Inc.; Honorable Wade O. Martin, Chairman, Honorable John S. Patton, Commissioner, Honorable Nat. B. Knight, Commissioner, P. A. Frye, Secretary, and Bertrand I. Cahn, Special Assistant Attorney General of Louisiana, for the Louisiana Public Service Commission; William Boizelle, Assistant City Attorney, Warren O. Coleman, and Edward Rightor, New Orleans, Louisiana, for the city of New Orleans; Roland C. Kizer, City Attorney, Fred S. Le Blanc, Mayor, S. A. Harris, Commissioner of Parks and Streets, and Jesse L. Webb, Commissioner of Finance, for the city of

Baton Rouge; Edward H. Lange, and Caso March, Washington, D. C., for the Federal Power Commission.

By the COMMISSION:

History of the Proceedings

These proceedings grew out of a complaint filed by the Louisiana Public Service Commission and were enlarged by the Commission's order of December 5, 1939, for an investigation of the reasonableness of all of the interstate wholesale rates and transportation rates of the Interstate Natural Gas Company, Incorporated, under the provisions of the Natural Gas Act.[1]

The complaint proceeding and the general investigation on the Commission's own motion were consolidated for the purposes of the hearing. Upon petition, the city of New Orleans and the city of Baton Rouge, Louisiana, were permitted to intervene in these proceedings.

Public hearings were held, pursuant to order and notice, at intervals during June and July of 1942 for a total of eight days. Comprehensive evidence was presented including 1,000 pages of oral testimony and 103 exhibits. The evidence was presented by Interstate, the Louisiana Commission, the cities of Baton Rouge and New Orleans, and by this Commission's staff. The short hearing and the concise record are attributable to the prehearing conferences held in accordance with the Commission's rules of procedure. Each party to these proceedings was cognizant of the issues and was afforded ample opportunity to present evidence. Briefs have been filed and the Commission, sitting en banc, heard oral argument.

Jurisdiction

Interstate owns and operates an integrated natural gas system consisting of 110 gas wells in the Monroe gas field located in northern Louisiana, pipe lines which gather the gas produced from its own wells, and gas purchased from other producers, and pipe lines which transport substantially all of that gas in interstate commerce to various points of sale and delivery in Louisiana and Mississippi.

Interstate's main pipe line transports gas south for approximately 172 miles from the Monroe field in Louisiana, through a part of Mississippi and then to Baton Rouge, Louisiana, where sales are made to the local distribution company for resale, and to the Standard Oil refinery and other industrial consumers. Interstate also sells gas to United Gas Pipe Line Company near the Monroe field and transports that gas for United from that point to Baton Rouge, and then United transports it to New Orleans where it is sold for resale for ultimate public consumption. Along this main pipe line Interstate sells gas in Mississippi and Louisiana directly to one industrial consumer, to a state institution, and to distribution companies for resale. Most of the gas transported in interstate commerce through the main pipe line by Interstate is destined for the Baton Rouge and New Orleans markets.

Interstate concedes that its transportation of natural gas by means of its main pipe line and its sales for resale from that main pipe line (with

[1] The term "interstate wholesale" when used in this opinion means the sale of natural gas in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

minor exceptions) are subject to the jurisdiction of this Commission, and that it is a natural-gas company within the meaning of the Natural Gas Act.

Interstate also purchases gas in the University, La Pice, and La Place fields south of Baton Rouge, transports that gas and delivers it to United at points along United's pipe line between Baton Rouge and New Orleans where the gas is commingled with gas flowing in interstate commerce. Some of this gas is then transported by United for Interstate for delivery to Interstate's industrial and wholesale customers between Baton Rouge and Destrehan, Louisiana; the remainder being sold to United for resale in the New Orleans market. Interstate and United Gas Pipe Line Company jointly own pipe lines which transport gas from wells in southern Louisiana, into United's Baton Rouge-New Orleans line and that gas is commingled with gas of interstate origin and augments the supply for the New Orleans market.

[1] The jurisdictional dispute presented in these proceedings involves Interstate's sales of gas in northern Louisiana to the Mississippi River Fuel Corporation, to Southern Natural Gas Company, and to United Gas Pipe Line Company for the account of Memphis Natural Gas Company. Mississippi River Fuel Corporation is an affiliate of Interstate; large blocks of voting stock of both companies are owned by Standard Oil Company (N. J.) and the president of Mississippi is also president of Interstate. The evidence discloses that Interstate and its affiliates, Hope Producing Company and Southern Carbon Company, control a substantial portion of the gas acreage and production from the Monroe field. Union Producing Company, an affiliate of United Gas Pipe Line Company, also controls a large portion of the acreage and production from the Monroe field. The evidence also shows close contractual and operating arrangements between Interstate and United Gas Pipe Line Company that have extended over a period of many years.

It is clear from the evidence that as a practical operating matter Interstate does not consider its transportation lines as something separate from its field lines. Interstate's pipe lines are operated as a unit. A large portion of the gas, sold by Interstate in northern Louisiana to the three pipe line companies mentioned above, is purchased and received by Interstate from other companies operating in the Monroe field, which first gather and transport the gas to specified central delivery points for sale to Interstate. Interstate transports the gas which it buys from such companies in the Monroe field and commingles that gas with gas which it has produced and gathered in the Monroe field, and then transports this commingled gas to the points of sale and delivery in Louisiana to the Mississippi River Fuel Corporation, Southern Natural Gas Company, and United Gas Pipe Line Company for the account of Memphis Natural Gas Company. The gas transported and sold by Interstate to these three pipe-line companies continues its flow in interstate commerce and, as an established course of business well known to Interstate, is destined for resale for ultimate public consumption in Memphis, St. Louis,

Birmingham, Atlanta, and other markets outside Louisiana.

In resisting regulation by the Louisiana Public Service Commission, the Interstate Natural Gas Company successfully contended in a Federal court that over 99 per cent of its total sales of gas, which include sales made to the three pipe-line companies, were sales in interstate commerce and beyond the reach of the Louisiana Commission. Interstate Nat. Gas Co. v. Louisiana Pub. Service Commission (1940) 33 F Supp 50, 33 PUR(NS) 193; 34 F Supp 980, 36 PUR(NS) 85. Interstate does not now deny that the sales of natural gas to the three pipe-line companies constitute sales of natural gas in interstate commerce for resale, but it contends that each of these sales constitutes a sale in the "production and gathering" of gas and falls within the claimed exemption stated in § 1(b) of the Natural Gas Act, 15 USCA § 717(b). Section 1(b) of the Natural Gas Act provides:

"The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The above-described sales to the three pipe-line companies come within the scope of the specific affirmative provisions of § 1(b) of the Natural Gas Act and are clearly sales "in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." It was such interstate wholesale sales which the United States Supreme Court had ruled were beyond the reach of the state Commissions,[2] that Congress intended to regulate by the Natural Gas Act.

The negative language in § 1(b) upon which the Interstate Company relies for its claimed exemption involving these sales provides that the Commission shall not have jurisdiction over "the production or gathering of natural gas." When the distinction between *production and gathering* of natural gas, and the *sale* of such gas in interstate commerce is kept in mind, effect is given to the congressional objective.[3] The Commission is bound to obey the command of Congress to regulate these sales in interstate commerce for resale to the three pipe-line companies. Such is clearly the implication of the decision of the circuit court of appeals in People Nat. Gas Co. v. Federal Power Commission (1942) 75 US App DC 235, 44 PUR

[2] H.R. Rep. No. 709, 75th Cong. 1st Sess. pp. 1, 2; S. Rep. No. 1162, 75th Cong. 1st Sess. pp. 1, 2; Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co. (1942) 314 US 498, 503, 506, 86 L ed 371, 42 PUR(NS) 53, 62 S Ct 384; Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 582, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736; Kentucky Nat. Gas Corp. v. Kentucky Pub. Service Commission (1939) 28 F Supp 509, 512, 30 PUR(NS) 249, aff. (1941) 119 F(2d) 417.

[3] For the distinction between production of a commodity and sales of such commodity in interstate commerce, see Carter v. Carter Coal Co. (1936) 298 US 238, 302, 80 L ed 1160, 56 S Ct 855.

(NS) 375, 127 F(2d) 153; cert. den. 316 US 700, 86 L ed 1769, 62 S Ct 1298.

We conclude, therefore, that the transportation and the sale of gas by Interstate to Mississippi River Fuel Corporation, Southern Natural Gas Company, and United Gas Pipe Line Company for the account of Memphis Natural Gas Company constitute the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, and other uses, and that such transportation and sales are subject to the jurisdiction of this Commission.

Corporate and Financial History

Interstate Natural Gas Company was organized in 1926 for the purpose of producing and transporting natural gas. The primary market to be served directly by Interstate was the refinery of the Standard Oil Company of Louisiana, and certain industrial companies south of Baton Rouge, Louisiana. Contracts also were made with other industrial consumers, distributing gas utilities, and other natural gas pipe-line companies.

The original securities issued were 600,000 shares of capital stock at $5 per share, or a total of $3,000,000 (later increased to $6,529,530) and $11,500,000 of first mortgage 10-year, 6 per cent sinking-fund gold bonds.

Interstate has paid off its bonds, has paid cash dividends exceeding $10,000,000 and has accumulated a surplus of more than $5,800,000 in the period 1926 to 1941.

Control of the Interstate Company from its inception has been in the Standard Oil Company (N. J.) through the ownership of a majority of the capital stock.

We now proceed to the determination of the lawful rates within the scope of our statutory authority. This will include a determination of rate base, rate of return, operating revenues and expenses, allocation of cost of service and reasonable earnings for the future.

Rate Base

[2] Upon consideration of all aspects of this case in the light of our authority under the Natural Gas Act, we conclude that the rate base is the actual legitimate cost of the property (including construction work in progress) used and useful in furnishing service, less the existing depletion and depreciation, plus necessary working capital. We find that it is not necessary for the purposes of this case to investigate and ascertain any other facts in order to determine the proper rate base.

Interstate claimed a rate base of $19,167,290 which was composed of the actual legitimate cost of gas plant in service, less observed deterioration and accrued depletion, plus future capital additions, construction work in progress, and estimated working capital. Reproduction cost was not claimed as an element in the rate base determination. Instead, it was conceded that actual legitimate cost was the proper starting point in that determination.

The allowable rate base is $15,583,975. We will now discuss the components thereof.

Actual Legitimate Cost

There is no dispute as to actual legitimate original cost. It is agreed that this amounted to $21,387,159 at the end of 1941. That undisputed amount represents the actual outlay to establish the utility; it is the gross investment the owners have made in the gas plant in service.

Existing Depletion and Depreciation

[3–6] The evidence as to the existing depreciation and depletion (hereinafter referred to as depreciation) in the properties may be summarized as follows:

Company witness	$3,845,619
Commission staff	6,328,924
Books of account	10,981,720

Interstate used the "observed deterioration" process to arrive at the figure of $3,845,619. In its previous decisions in the Canadian River and Hope Cases, the Commission has dealt at length with the fallacy of the "observed deterioration" method of determining accrued depreciation. Re Canadian River Gas Co. (1942) 43 PUR(NS) 205, 218; Cleveland v. Hope Nat. Gas Co. (1942) 44 PUR (NS) 1, 17. We have pointed out that it results in arbitrary conclusions, based on a consideration of superficial evidence of physical deterioration only, while disregarding more important factors, such as the remaining life of the gas reserves, obsolescence, and the economic life of the property. The method is inherently fallacious in that it confuses the appearance or physical condition of property with true depreciation, which is the using up of its economic or service life. It does not give consideration to all factors contributing to the retirement of property; hence it cannot reflect the actual existing depreciation.

The method employed by the company to determine existing or accrued depreciation is inconsistent with the method used to determine annual depreciation expense. Annual depreciation expense and accrued depreciation are merely two phases of the same phenomenon. They must be determined consistently or grave injustices will result. The annual depreciation expense claimed by the company was determined according to the economic or service life principle. This is the general practice, and is proper. In determining accrued depreciation, however, the company objects to the service life principle, and insists upon a scheme which cannot result in disclosing the full amount of depreciation which has been suffered.

Thus, the company seeks to employ a double standard: one which results in high annual allowances to it for depreciation expense, and another which discloses little depreciation to be deducted in determining the rate base. The annual allowance claimed by the company would in six and one-fourth years total more than the amount which it contends has accrued during fifteen years of actual operations. In other words, the dual standard advocated is a pincers operation which always results in squeezing too much from the ratepayer. As indicated previously, annual depreciation expense and accrued depreciation are merely two aspects of the same phenomenon which require consistent treatment in their determination.

The Commission's staff presented in these proceedings a depletion and

depreciation reserve requirement study, that is, a computation of the proper reserve which should have been accrued. A qualified staff engineer, who analyzed the company's past experience, relevant service life data on other pipe lines, and who made a field inspection of the company's physical properties, estimated the over-all service lives of the properties by classes. His study included a careful consideration of both functional and physical aspects of depreciation. In this case the economic service life of Interstate's property is limited and controlled by the available gas supply which is estimated to be exhausted by 1960 and before certain of the physical elements of the property will deteriorate completely. There is no controversy over the amount of the company's gas reserves and known available supply, which are estimated to have an over-all life of thirty-five years from their first utilization in 1926.

The depreciation rates which the staff used in computing both the annual expense and the reserve requirement were derived from the average service lives of the various classes of properties. The equitable principle that annual expenses for depreciation must be harmonized with accrued depreciation was recognized and applied. The reserve requirement at any given time is the accumulated amount of proper annual provision for depreciation, less the cost of property retired. The method used by the staff follows our previous decisions. Under it, there is determined the amount required annually to reimburse the company for property consumed in service, thus assuring the company it will be fully reimbursed for its capital investment by the end of the economic life of its wasting-asset enterprise.[4] Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 593, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736.

The Commission finds that the required depletion and depreciation reserve as computed by the staff is the best measure of actual existing depletion and depreciation in the properties.[5] At the end of 1941 the reserve requirement, by functional classifications, was:

Depletion:	
Natural gas operated acreage ...	$527,237
Depreciation:	
Production plant	358,786
Transmission plant (wholly owned)	5,305,096
Transmission plant (jointly owned)	21,106
General plant	116,709
Total Reserve Requirement..	$6,328,934

This required reserve, totaling $6,328,934, will be deducted from the

[4] The unit-of-production method (unit equals 1,000 cubic feet of gas) was used to determine the annual depletion and depreciation and the reserve requirement for natural gas producing lands, leaseholds, and rights, wells, field lines, field measuring and regulating structures and equipment, and other structures and equipment associated with operations in the Monroe gas field. The straight-line service life method was used to determine annual depreciation and the reserve requirement for all other plant items. There is no dispute over the use of the service lives in this case for determining the depreciation rates upon which the annual allowance for depreciation is based.

[5] See Re Long Island Lighting Co. (NY 1935) 18 PUR(NS) 65, 146–151, 189–191; aff. (1937) 249 App Div 918, 18 PUR(NS) 225, 226, 292 NY Supp 807, 809; Re Rochester Gas & E. Corp. (NY 1940) 33 PUR(NS) 393, 489, 502; National Association of Railroad and Utilities Commissioners, Proceedings of Fiftieth Annual Convention (1938) pp. 473, 474.

actual legitimate cost of the company's property.

As indicated hereinbefore, Interstate had accrued on its books a reserve for depreciation, depletion, and amortization aggregating $10,981,720 by the end of 1941. The company's book reserve exceeds the reserve requirement, which the Commission finds to be the measure of actual existing depletion and depreciation, by more than $4,600,000.

For the reasons set forth at length in the Hope Case, the Commission has deducted from actual cost only what it has determined to be the reserve requirement which reflects the depletion and depreciation accrued in Interstate's property, Cleveland v. Hope Nat. Gas Co. (Fed PC 1942) 44 PUR(NS) 1, 18.

Construction Work in Progress and Estimated Capital Additions

[7, 8] The Interstate Company showed on its books in the account, Construction Work in Progress, a balance of $178,550 on December 31, 1941. Since practically all of this balance represented the cost of plant which had been placed in service before the end of 1941, or was placed in service shortly thereafter, the entire amount will be included in the rate base.

The company urges the Commission to include in the rate base the amount of $1,500,000 [6] for property additions proposed for the years 1942–1946. These proposed additions to plant are primarily designed to meet increased demands for gas. The increased revenues from the future business should provide ample coverage for the return and costs of operation in connection with the future use of the proposed additions. We conclude that it would be improper to include in the rate base these estimated amounts for future additions, since the revenues from the predicted increase in business are not reflected in the test period of operations which we employ. Furthermore, the Supreme Court held in the Natural Gas Pipeline Company Case, " . . . the refusal to include in the rate base capital expenditures not yet made cannot involve confiscation." [7]

Working Capital

[9–11] Interstate claimed working capital in the amount of $447,202. The staff recommended $347,202. Working capital consists of two chief elements, materials and supplies, needed in the business and cash necessary to meet the operating expenses from day to day pending collection of revenues. There is no dispute as to the required amount of materials and supplies ($268,341). The staff indicated that $78,861 was reasonable for the cash working capital, whereas the company claims an even $100,000 in excess of that amount. The extra $100,000 is claimed to be needed for the purpose of maintaining bank balances.

[6] The cost of additions will be offset fully by accruing depletion and depreciation. The net increase in depletion and depreciation (accruals less retirements) was $564,549 in 1941, and this pattern of increasing depletion and depreciation is a constant one. Thus, the proposed $1,500,000 additions during 1942–1946 to plant are less than the depletion and depreciation which will accrue during the same period.

[7] Federal Power Commission v. Natural Gas Pipeline Co. *supra*, 315 US at p. 587, 42 PUR(NS) at p. 138, footnote 5.

The amount computed by the Commission's staff for cash working capital was related to operating expenses, as is proper. The cash necessary to run the business is that which must be available to meet current expenses during the lag between the time of rendering service and collection of revenues. Taxes are accrued and, in effect, collected from the customers long before they have to be paid by the company. These tax accruals in excess of payments will supply adequate bank balances. In recent years the tax accruals, representing the excess of taxes charged to operations over the amounts actually paid to any given date, have always exceeded $500,000. We find, therefore, that the necessary allowance for working capital, including materials and supplies, is $347,202.

Conclusions with Respect to the Rate Base

The analysis of the evidence which we have discussed with respect to the components of the rate base and our conclusions may be summarized thus:

Actual legitimate cost or gross investment in gas plants in service, 12/31/41	$21,387,157
Less: Actual existing depletion and depreciation	6,328,934
Net investment in gas plant in service	$15,058,223
Add: Construction work in progress	178,550
Working capital	347,202
Rate Base	$15,583,975

The Commission, therefore, adopts the foregoing amount as the rate base for the company's property as an assembled whole and an established gas utility in successful operation.

Rate of Return

[12, 13] Numerous factors enter into the determination of what constitutes a fair rate of return in every utility rate case. The principal factors are stated by the Supreme Court in Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR1923D 11, 43 S Ct 675. They are that the return of a public utility shall be equal to that generally being made at the same time in the same region on investments in other enterprises attended by corresponding risks, and that the return should be sufficient to assure confidence in the financial soundness of the utility and to maintain its credit and enable it to attract the capital necessary for the proper discharge of its public duties. The Supreme Court has said, nevertheless, that a utility has no constitutional right to profits such as are realized by highly profitable enterprises or speculative ventures.

The record contains an abundance of evidence on the subject of rate of return. The information includes investors' appraisal of the natural gas industry, comparative risk data, interest rates and yields on securities of natural gas and electric utilities, statistics showing the growth and stability of the natural gas industry, the trend of the cost of money and its current cost, economic and idle money data, and the financial history of Interstate. That evidence reveals that, compared to industrial and railroad enterprises, the utility business has relatively greater stability. It also shows that interest rates generally

are now lower than they have ever been; for example, it shows that the yields on the better issues of natural-gas company bonds sold recently are close to 3 per cent.

The record shows that Interstate is a well-established natural-gas company whose risks have been minimized by ample past and present provisions for depletion and depreciation with current high profits and by many established markets. By 1941, Interstate had retired all of its own and assumed bonded indebtedness in the aggregate face amount of $12,400,000, had paid cash dividends exceeding $10,000,000, had accumulated a depletion and depreciation reserve of $10,000,000 and a surplus of more than $5,800,000. The company's efficient management, established markets, financial record, affiliations, and its prospective business, place it in a strong position to attract capital upon favorable terms should additional capital ever be required.

We conclude, upon a careful consideration of the evidence and in the light of the principles enunciated by the Supreme Court, that 6½ per cent is a fair annual rate of return upon the rate base applicable to the federally regulated business of this Company. Our views on the subject of rate of return are in harmony with recent decisions by the Supreme Court and other courts and Commissions involving natural gas companies.[8]

Operating Revenues and Expenses

There is no controversy over the volume of gas sold and transported or the revenues received by Interstate. The Commission's staff presented adjusted book figures for revenues and expenses of the Interstate Company for the 4-year period 1938–1941. The adjustments resulted mainly in a reduction of the annual amounts charged by the company for depletion and depreciation expense. The amount of depreciation and depletion expense calculated for 1941 was $614,896.50. The company did not challenge this amount, which we find reasonable. In fact, the company offered no evidence on revenues and expenses and did not challenge the correctness of the income statements presented by the staff. There is no dispute over the amount of net utility income for the 4-year period, which the evidence shows was $2,385,375 for 1938; $2,532,820 for 1939; $2,275,744 for 1940, and $2,386,191 for 1941.

From these figures it is seen that net utility income has remained fairly stable during the four years of this period. Accordingly, since 1941 operations are typical and afford the latest available data, they have been chosen as the best guide for fixing rates for the future.

Allocation of Cost of Service

[14] Interstate's properties are used in transactions over which we have jurisdiction, as well as those be-

[8] Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 596, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736; Arkansas-Louisiana Gas Co. v. Texarkana (1938) 96 F(2d) 179, 188, 24 PUR (NS) 267; Peoples Gas Light & Coke Co. v. Slattery (1939) 373 Ill 31, 31 PUR(NS) 193, 25 NE(2d) 482, 501; East Ohio Gas Co. v. Cleveland (Ohio 1939) 27 PUR(NS) 387, 412, aff. (1940) 137 Ohio St 225, 35 PUR(NS) 158, 28 NE(2d) 599, 612; Re Montana-Dakota Utilities Co. (Mont 1940) 32 PUR(NS) 121, 128; Pennsylvania Pub. Utility Commission v. Peoples Nat. Gas Co. (Pa 1942) 43 PUR(NS) 82, 115.

yond our jurisdiction, and they are also used to render service to customers with varying load and other characteristics. Its operating expenses likewise relate to these several phases of the company's operations. This gives rise to joint costs. It, therefore, becomes necessary to resort to allocations for the purpose of determining just and reasonable rates of the business subject to regulation under the Natural Gas Act and also for the purpose of determining the proper disposition of any rate reduction which we may order.

[15] There are two general methods of making allocations. Under one, an allocation of the cost of physical property and of operating expenses is made. Under the other, the return on the property, rather than the cost of the property itself, is allocated along with the operating expenses. If the same pertinent figures are used in the calculations, the results will be the same under both methods. The method which allocates the return along with operating expenses is far more practical and is easier to understand and to apply. This may be denominated the "reasonable cost of service method." All that can be accomplished by an allocation of the physical property can be, and is, obtained by an allocation of the reasonable cost of service, including therein a proper return.

The allocation which we adopt in this case is based upon a careful and detailed study of the company's property, operations, costs, types of customers served, location of service and the amount and characteristic of customers' requirements for gas.

[16, 17] In making such allocations, operating cost and return are distributed in two categories: those which relate to production and purchases, and those which relate to transportation and delivery. Costs relating to transportation and delivery are in turn divided as between demand and volume (thousand cubic feet) costs. In general, the fixed costs are associated with demand and the variable costs with volume. An exception to this rule relates to return, Federal and state income taxes, and Federal capital stock taxes. These, to the extent they relate to transportation and delivery of gas, we allocate 50 per cent to demand and 50 per cent to volume. The reason for this latter division is that a part of the return or profit should naturally come from the volume of business and a part from the customers' demand, that is, the capacity of facilities required to render service. Income taxes and capital stock taxes are associated with return and are, therefore, allocated in the same manner.

[18] Costs relating to the production or to the purchase of gas by Interstate, including the operation of field lines, are classified as volume or "commodity costs" only. This is in accordance with generally accepted practice. Gas in and very near the fields almost invariably sells on a straight thousand cubic feet basis. Demand charges for such gas are not exacted.

[19] The transportation and delivery costs which are associated with demand are allocated in proportion to each customer's responsibility for the peak-day demand for gas. The transportation and delivery costs which are associated with volume are allocat-

ed in proportion to the volume (thousand cubic feet) of gas sold to each customer.

The operating expenses, including

located to transactions over which we have jurisdiction and $2,071,242 to transactions which are not under our jurisdiction:

	Revenues 1941	Reasonable Cost of Service	Excess of Revenues Over Cost
Sales of Gas for Resale to:			
Pipe-line Companies:			
Mississippi River Fuel Corp.	$686,012	$384,683	$301,329
Southern Natural Gas Co.	594,459	447,656	146,803
United Gas Pipe Line Co. (for a/c Memphis Natural Gas Co.)	334,396	186,208	148,188
United Gas Pipe Line Co. (for New Orleans area)	831,385	534,516	296,869[10]
Distribution companies in Louisiana and Mississippi	380,947	245,464	135,483[10]
Transportation of gas for United Gas Pipe Line Co. (for New Orleans area)	1,036,533	689,428	347,105[10]
Total Regulated Business	$3,863,732	$2,487,955	$1,375,777
Gas Sales to:			
Industrial customers	3,689,533	2,674,455	1,015,078
Public authority	46,807	26,787	20,000
Total Unregulated Business	$3,736,340	$2,701,242	$1,035,098
Grand Total	$7,600,072	$5,189,197	$2,410,875

[10] These are the excesses prior to certain reductions in rates made during the course of these proceedings and discussed later in this opinion.

depreciation and depletion, but excluding Federal income taxes, amounted to $3,960,766 in 1941. A return of 6½ per cent on the total rate base of $15,583,975, we have heretofore found, amounts to $1,012,958. Interstate would have paid $215,472 Federal income taxes for the year 1941 if its net utility income for that year had been limited to 6½ per cent. Accordingly, the latter figure is used in the cost of service allocation.

The total reasonable cost of service for 1941 on the basis described above amounts to $5,189,197. An allocation of this cost to the various customers, those under as well as those beyond our jurisdiction, is shown in the following tabulation which also shows the respective revenues and earnings in excess of 6½ per cent return. The table shows that $2,487,955 of the total reasonable cost is al-

The return in excess of 6½ per cent earned in 1941 on transactions which are subject to our jurisdiction, as shown in the table, amounted to $1,375,777. A reduction in rates of this amount does not mean that Interstate's profits will be reduced by the same figure. Only $772,624 will be borne by Interstate, the balance representing a saving in income taxes.[9]

Based upon the evidence in this case, we find that Interstate's reasonable cost of service for the year 1941, including a 6½ per cent return on the rate base and corresponding 31 per cent Federal income taxes, should be allocated in the amounts of $384,683 to the Mississippi River Fuel Corporation, $447,656 to the Southern Nat-

[9] If the total excessive earnings of $2,410,875 were applied to the reduction of rates, $1,353,917 would come from the profits of Interstate and $1,056,958 from savings in income taxes.

ural Gas Company, and $186,208 to the United Gas Pipe Line Company for the account of Memphis Natural Gas Company, $534,516 to the United Gas Pipe Line Company for the New Orleans area, $245,464 to distribution companies, and $689,428 to the United Gas Pipe Line Company for the transportation of gas. The foregoing are sales and transactions subject to the jurisdiction of the Commission. The reasonable cost of service, including 6½ per cent rate of return and 31 per cent Federal income taxes, properly allocable to unregulated sales, is $2,674,455 to industrial customers and $26,787 to a public authority.

[20] If, in the reasonable cost of service for regulated business of 1941, shown in the foregoing tabulation, Federal income taxes had been calculated at the 1942 rate of 40 per cent for normal and surtaxes instead of the applicable rate of 31 per cent, which was the rate used, that cost would have been $50,000 more than shown. The tax rate of 31 per cent has been employed because it was the applicable rate for 1941, and the record indicates that Interstate's business will be increased sufficiently to provide for the additional tax of $50,000.

Reasonable Earnings for the Future

The revenue and cost of service figures set forth above disclose that the company's rates for the transportation of gas and the sale of gas in interstate commerce for resale, which are subject to Federal regulation, were unreasonably high in the amount of $1,375,777.[11] In some instances, these rates have been reduced in line with proposals made by the company and accepted by the Commission during the course of this proceeding.

The company's rate reduction established a single uniform rate for all city gate deliveries made by the Interstate Company to local distribution companies in Louisiana and Mississippi. Based on 1941 sales volumes, the total annual reduction made to those distribution companies is $126,721.

In the Commission's Opinion No. 90 and order issued April 16, 1943, involving the rates of the United Gas Pipe Line Company, 48 PUR(NS) 91, 95, the statement was made:

"A very substantial part of the gas consumed in the city of New Orleans is transported by Interstate Natural Gas Company, Inc. for United and in addition United purchases gas from Interstate. Any reduction in the charges of Interstate will result in a further reduction in the New Orleans gate rate. Proceedings involving Interstate's rates were instituted some time ago; hearings have been held and briefs filed therein (Docket No. G-149). This matter is under active consideration by the Commission and an early decision will be rendered."

It has been shown in the cost of service tabulation above that the rates

[11] Upon giving effect to the total rate reduction of $1,375,777, the company's net utility income as indicated by the 1941 figures will be approximately $1,700,000. This amount consists of the return on the entire rate base at 6½ per cent, amounting to $1,012,958, and the earnings on unregulated business *in excess of 6½ per cent return*, of approximately $700,000. This sum of $1,700,000 is equivalent to a return of about 11 per cent on the entire rate base.

of Interstate to United for the sale and transportation of natural gas for the New Orleans area are excessive as follows, based on 1941 operations:

For sale of gas	$296,869
For transportation of gas	347,105
Total	$643,974

In 1942, Interstate reduced its rates to United effective retroactively to August, 1941. These reductions affected both the charges for the sale and for the transportation of gas for the New Orleans area. The reductions are not reflected in the figures immediately above. These reductions, on an annual basis, total $148,711 which, deducted from the above amount of $643,974, leaves a balance available for further reduction to the United Company for the New Orleans area of $495,263. The New Orleans area includes the city of New Orleans served by New Orleans Public Service, Inc., and the contiguous area served by Louisiana Power and Light Company. The bulk of this reduction is applicable to New Orleans.

After making appropriate allowance for the reductions made during the course of these proceedings by Interstate to the distribution companies and United, which reductions total $275,432 annually, we determine that the just, reasonable, and nondiscriminatory rates to be hereafter observed by Interstate and fixed by order of this Commission shall reflect such further reduction in rates as, when applied to the volume of gas sold and transported under Federal regulation for 1941, will amount to not less than $1,100,345, distributed as follows:

Mississippi River Fuel Corporation	$301,329
Southern Natural Gas Company	146,803
United Gas Pipe Line Company (for a/c Memphis Natural Gas Company)	148,188
Distribution companies in Mississippi and Louisiana outside of New Orleans	8,762
United Gas Pipe Line Company for New Orleans area—Sale and transportation	495,263
	$1,100,345

An appropriate order will be entered in accordance with this opinion.

ORDER

Upon consideration of the complaint, answer, petitions, and orders previously entered in these proceedings, the evidence of record, the briefs and oral argument, and the Commission having on this date entered and issued its Opinion No. 91 which is hereby incorporated by reference and made a part hereof;

The Commission finds that:

(1) Interstate Natural Gas Company, Incorporated, is a corporation organized and existing under and by virtue of the laws of the state of Delaware;

(2) Interstate is engaged in the purchase, production, and gathering of natural gas in the Monroe field in the state of Louisiana, and in the transportation of natural gas so produced, purchased, and gathered, out of the state of Louisiana and through the state of Mississippi and back into the state of Louisiana;

(3) The natural gas transported as described in finding (2) is sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, and other uses;

(4) Interstate is engaged in the transportation of natural gas in in-

terstate commerce, and in the sale in interstate commerce of natural gas for resale, and is, therefore, a natural-gas company within the purview of the Natural Gas Act;

(5) The transportation and sale of natural gas in interstate commerce as described in findings (2) and (3) are subject to the jurisdiction of the Federal Power Commission;

(6) Interstate sells gas to United Gas Pipe Line at wholesale, technical delivery being made at Interstate's De Siard Compressor Station near Fowler, Louisiana, and such gas is transported by it for United through Interstate's main pipe line through the state of Mississippi and redelivered to United at Baton Rouge, Louisiana, for resale for ultimate public consumption, and these transactions constitute transportation and sale of natural gas by Interstate in interstate commerce for resale and are subject to the jurisdiction of this Commission;

(7) Interstate, as an established course of business, is engaged in the transportation, sale, and delivery of natural gas purchased, produced, and gathered in Monroe field, Louisiana, to Mississippi River Fuel Corporation and Southern Natural Gas Company at a point near Perryville in the state of Louisiana, and to the United Gas Pipe Line Company for the account of Memphis Natural Gas Company at a point near Guthrie in the state of Louisiana;

(8) The natural gas purchased, produced, gathered, and transported, that is sold and delivered to Mississippi River Fuel Corporation and Southern Natural Gas Company, and to United Gas Pipe Line Company for the account of Memphis Natural Gas Company, as described in finding (7), is sold and delivered by Interstate, in each instance, pursuant to the terms of a contract which provides that the gas so sold is received by the purchaser and transported by it out of the state of Louisiana for the purpose of resale in states other than Louisiana for ultimate public consumption for domestic, commercial, industrial, and other uses;

(9) The natural gas purchased, produced, gathered, and transported, that is sold and delivered to the purchasers named in finding (7), moves in each instance in a constant flow from the mouths of the wells from which it is produced through pipe lines belonging to Interstate to the compressor station of the respective purchaser, and thence through said compressor stations into the pipe line of said respective purchaser and thus into and through states other than Louisiana as described in finding (8), all without interruption, and said gas is so destined from the moment of its production;

(10) The transportation and the sale of natural gas as described in finding (7) is, in each instance, the transportation and sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, and other uses, and, therefore, subject to the jurisdiction of the Commission;

(11) The actual legitimate cost of Interstate's gas plant in service as of December 31, 1941, was $21,387,157;

(12) Interstate's estimate of observed existing depreciation in its properties rests upon incomplete and inadequate data, is basically unsound

and unreliable, and does not reflect the actual depreciation existing in such properties;

(13) The actual depletion and depreciation existing in Interstate's gas plant in service as of December 31, 1941, was $6,328,934;

(14) The net investment in Interstate's gas plant in service as of December 31, 1941, was $15,058,223;

(15) Construction work in progress as of December 31, 1941, amounted to $178,550;

(16) Working capital, including materials and supplies, in the aggregate amount of $347,202 will be required in the operation of the company;

(17) For the purpose of fixing reasonable rates, Interstate is entitled to earn a fair return on a rate base consisting of the net investment in plant in service, construction work in progress, and working capital in the aggregate amount of $15,583,975;

(18) Under presently existing conditions, 6½ per cent per annum is a fair return on that portion of the rate base devoted to the regulated business;

(19) For the purpose of determining the reasonableness of rates charged in 1941, and for the future, Interstate's total gas revenues amounted to $7,600,072;

(20) For the purpose of determining the reasonableness of rates charged in 1941, and for the future, Interstate's reasonable cost of service, including operating expenses, taxes, and return on the rate base, amounted to $5,189,197;

(21) Tested by 1941 revenues and cost of service, as described in findings (19) and (20), the rates and charges collected by Interstate from pipe-line companies and distribution companies for natural gas transported and sold in interstate commerce for resale are excessive in the aggregate amount of at least $1,375,777;

(22) Since 1941, Interstate has reduced its rates to all of its distribution company customers by $126,721 and to United Gas Pipe Line Company for the transportation and sale of gas by $148,711; these reductions total $275,432 which deducted from $1,375,777 in finding (21) leaves $1,100,345, available for further reductions;

(23) The rates, charges, or classifications that are demanded, observed, charged, or collected by Interstate in connection with the transportation and sale of natural gas subject to the jurisdiction of this Commission are unjust, unreasonable, and unlawful;

(24) The revenues derived from rates, charges, or classifications demanded, observed, charged, or collected by Interstate in connection with the transportation and sale of natural gas subject to the jurisdiction of this Commission exceed revenues which would be derived from just and reasonable rates by the amount of at least $1,100,345;

(25) The rates and charges of Interstate, after reflecting the reduction hereinafter ordered, will be just and reasonable;

Therefore, the Commission *orders* that:

(A) The rates and charges received by Interstate for the transportation and sale of natural gas in interstate commerce for resale for ultimate pub-

lic consumption shall be decreased to reflect a reduction in rates which, applied to the 1941 volume of sales, will amount to not less than $1,100,-345 annually;

(B) Interstate shall file on or before May 15, 1943, new schedules of rates and charges for the transportation and sale of natural gas in interstate commerce to its customers for resale for ultimate public consumption, which shall reflect the reduction ordered in paragraph (A) above, and be just, reasonable, and nondiscriminatory and in accordance with the allocation of cost of service set forth in the opinion, and such new schedules of rates and charges shall be effective as to all bills rendered on or after May 15, 1943;

(C) The Commission reserves the right to reject all or any part of such new schedules and, in lieu thereof, to prescribe any other schedules by further order;

(D) On and after the effective date of the new schedules of rates and charged filed and made effective in accordance with paragraph (B) above, Interstate shall cease and desist from making, demanding, or receiving any rates and charges which do not reflect the reduction ordered in paragraph (A) above.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Potomac Electric Power Company

[Formal Case No. 333, Order No. 2563.]

Accounting, § 32 — Electric plant acquisition — Land and buildings — Former use as streetcar barn.

1. A land and building acquired by an electric utility company, although previously used in public service as a streetcar barn, does not constitute an operating unit or system in so far as electric plant is concerned and, therefore, the transaction is not one that should result in a charge to Account 100.5, Electric Plant Acquisition Adjustment, p. 287.

Accounting, § 32 — Land and building acquired from affiliate — Value or cost — Bondholders' rights.

2. Land and a building acquired by an electric company from a parent company at a price representing the market value of the property at the time of sale is properly included in electric plant as the purchase price, rather than original cost to the parent company, where the property was covered by a mortgage under the terms and conditions which the proceeds from the sale were required to be deposited with the trustee in order to release the properties from the lien of the mortgage, since this does not constitute a write-up of electric plant within the meaning of the text of Account 107, Electric Plant Adjustments; the interest of the bondholders is definitely a factor, and possibly the controlling factor, in the substitution of present-day value for cost, and the mortgage trustee would have been derelict in his duty if he had accepted a lesser amount of cash than the present value

of the mortgaged property sold, and under the circumstances the intercompany relationship is not a controlling factor in the determination of the price but the purchase is equivalent to an arm's-length transaction between unaffiliated companies, p. 287.

(HANKIN, Commissioner, dissents.)

[April 21, 1943.]

INVESTIGATION *of accounting adjustments relating to acquisition of land and building by electric company from parent company; accounting treatment by company approved. Petition for reconsideration denied May 25, 1943.*

By the COMMISSION:

[1, 2] Our Order No. 2539 reserved for further consideration the accounting procedure for the intercompany profit of $140,377.10 realized by the Washington Railway and Electric Company when land and building at Eleventh street and Florida avenue, Northwest, was sold to the Potomac Electric Power Company. There is no dispute as to the facts. The common stock of the Potomac Electric Power Company is wholly owned by the Washington Railway and Electric Company. The value of the land at the time of the sale (1930) was determined by the appraisal committee of the Washington Real Estate Board. The value of the building was determined by the engineering department of the Potomac Electric Power Company. It is conceded that the price paid was the best estimate of the market value of the property at the time of the sale. The property was covered by the mortgage of the Anacostia and Potomac River Railroad Company. Under the terms and conditions of the mortgage the proceeds from the sale were required to be deposited with the trustee in order to release the property from the lien of the mortgage.

The question involved is whether or not this transaction constitutes a write-up of electric plant of the Potomac Electric Power Company within the meaning of the text of Account 107–Electric Plant Adjustments, of the Uniform System of Accounts for Electric Utilities or an acquisition adjustment within the meaning of the text of Account 100.5–Electric Plant Acquisition Adjustments. The text of Account 100.5 states:

"This account shall include the difference between (a) the cost to the accounting utility of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated if not known, of such property, less the amount or amounts which may be credited to the depreciation and amortization reserves of the accounting utility at the time of acquisition with respect to such property."

Electric plant account instruction 3–A states:

"All amounts included in the accounts for tangible electric plant consisting of plant acquired as an operating unit or system shall be stated at the original cost incurred by the person who first devoted the property to

utility service. All other tangible electric plant shall be included in the accounts at the cost incurred by the utility."

Prior to its purchase by the Potomac Electric Power Company the land and building in question was used as a street car barn by the Washington Railway and Electric Company and was not, therefore, devoted to electric utility service, although it was used in public service. It definitely did not constitute an operating unit or system in so far as electric plant is concerned. We are therefore of the opinion that this transaction is not one that should have resulted in a charge to Account 100.5–Electric Plant Acquisition Adjustments. This decision then leaves the question of whether or not this transaction merely because of the intercompany profit involved constitutes a write-up.

We are thoroughly in accord with the principle that write-ups have no place in utility plant account. We further recognize that an intercompany transaction is immediately open to question whenever value is substituted for cost and that it is often a vehicle for an unjustified increase in assets. On the other hand, however, where minority stockholders are involved an intercompany transaction at cost rather than value would adversely or beneficially affect such stockholders without justification, and in such cases we believe that it is essential to use value rather than cost in equity to minority stockholders. The question of minority stockholders is not involved in the transaction under consideration, but the interest of the holders of the Anacostia and Potomac River Railroad Company's bonds is definitely a factor, and possibly the controlling factor, in the substitution of present-day value for cost in this transaction. Obviously, the trustee of the mortgage would have been derelict in his duty had he accepted a lesser amount of cash than the present value of the mortgaged property sold.

After consideration of all the facts and circumstances involved in this transaction, we conclude that the intercompany relationship was not a controlling factor in the determination of the price paid and that the purchase of the property in question was equivalent to an arm's-length transaction between two unaffiliated companies. We therefore find that under our interpretation of the provisions of the Uniform System of Accounts for Electric Utilities, this transaction was properly recorded on the books of the Potomac Electric Power Company.

It is therefore *ordered:*

Section 1. That the accounting treatment by the Potomac Electric Power Company of the purchase of land and building located at Eleventh street and Florida avenue, Northwest, in 1930 be, and it is hereby, approved.

By the Commission (Commissioner Hankin dissenting for the reasons set forth in his separate opinion in Formal Case No. 326—In the matter of Investigation of Rates, Tolls, Charges, Rules, Regulation, and Conditions of Service of the Potomac Electric Power Company, post, at p. 437).

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re George R. McCord

[Application Docket No. 60146, Folder 2.]

Public utilities, § 71 — What constitutes — Messenger service on foot.

A person operating a call-and-delivery service by means of foot messenger or delivery boy is not a public utility within the meaning of a statutory definition referring to the ownership or operation of "equipment," or "facilities" for transportation.

(SIGGINS, Chairman, dissents.)

[May 26, 1943.]

APPLICATION *for authority to operate as common carrier by messenger on foot; dismissed for lack of jurisdiction.*

By the COMMISSION: On July 2, 1942, George R. McCord, an individual, filed an application with the Commission for a certificate of public convenience authorizing him to transport as a common carrier by messenger on foot, optical goods and supplies from wholesale opticians, optical laboratories, and manufacturers of optical goods and supplies in the territory in the city and county of Philadelphia, bounded by Pine street, Seventh street, Arch street, and Twenty-second street, to opticians, oculists, optometrists, medicial doctors, and hospitals in said territory, and vice versa.

The evidence adduced at the hearing held on November 16, 1942, discloses that applicant proposes to offer an exclusive foot messenger or delivery boy service for the wholesale optical trade by operating a scheduled and routed call and delivery service from a point located within the area. At 9 A. M., the foot messengers, following their prescribed routes, will call at the offices of medical doctors, optometrists, etc., and pick up whatever work they have and bring it to the central office to be distributed at once to the laboratories. At 11 A. M., they will deliver the work the laboratories have finished and at the same time pick up work for the laboratories. At 2.30 P. M., the same pick-up and delivery service is to be in effect and at 4:30 P. M., there would be a delivery service of finished work from the laboratories only.

The fact that applicant proposes to transport property of the optical trade without transportation facilities of any kind, except by human beings, instantly raises the question of our jurisdiction over the proposed service.

According to the title of the Public Utility Law, it is an act, "Relating to the regulation of public utilities; defining as public utilities certain corporations, companies, associations, and persons; . . ." The only persons or

corporations required to obtain a certificate of public convenience are actual or proposed "public utilities": Sections 201 and 202 of the Public Utility Law. A "public utility" is defined by § 2(17)-(c) of the Public Utility Law as being those ". . . persons or corporations now or hereafter owning or operating in this commonwealth equipment, or facilities for: . . . Transporting passengers or property as a common carrier; . . ."

In order that applicant be a "public utility" he must have all the attributes of that term as are contained in its definition if he would come within our jurisdiction. There is no doubt that applicant as an individual is a person entitled to make application; § 2(16) of the Public Utility Law. It is also clear that the proposed service is that of "common carriage" as that term is defined by § 2(5) of the Public Utility Law and, as a consequence, all the matters and things respecting "Service" as defined by § 2(20) and "Transportation of . . . Property" as defined by § 2(23), would instantly attach thereto. But one element is lacking. Applicant does not, nor does he propose to own or operate equipment or facilities for the transportation of property. The language used in defining the term "public utility" we think is clear. It does not mean that applicant must merely own some sort of equipment or facilities. Quite to the contrary, it means that the equipment or facilities are owned or operated for the very purpose of transporting either persons or property. After a careful review of the entire Public Utility Law and with the clear language of the definition of a "public utility" in mind, we are constrained to hold that the definition of the word "facilities," § 2(10) of the Public Utility Law, which contains the word "equipment," includes or was ever intended to include the means of transportation proposed to be used by applicant.

Confining this order to the particular facts of this application, we are of the opinion that applicant is not, nor does his proposed service constitute him a "public utility." The application should be dismissed for lack of jurisdiction; therefore,

Now, to wit, May 26, 1943, it is *ordered:* That the application filed by George R. McCord at A. 60146, Folder 2, be and is hereby dismissed for lack of jurisdiction.

The Chairman voted in the negative.

UNITED STATES CIRCUIT COURT OF APPEALS,
THIRD CIRCUIT

Columbia Oil & Gasoline Corporation

v.

Securities and Exchange Commission

[No. 8223.]

(134 F(2d) 265.)

Appeal and review, § 13 — Proper court — Exclusive jurisdiction — Filing of transcript.

1. A circuit court of appeals in which the Securities and Exchange Commission has filed a transcript of the record upon which an order has been entered under the Holding Company Act acquires exclusive jurisdiction over the order of the Commission by reason of such filing, under the express terms of § 24(a) of the act, 15 USCA § 79x(a), p. 292.

Appeal and review, § 79 — Time limitation — Holding Company Act — Leave to file nunc pro tunc.

2. A circuit court of appeals has no power to avoid the statutory limitation prescribing the time within which a petition to review an order of the Securities and Exchange Commission must be filed by granting leave to file a petition nunc pro tunc after the 60-day time limit prescribed by the Holding Company Act has expired, p. 292.

Appeal and review, § 74 — Procedure — Federal circuit court — Petition filed in other court.

3. The circuit court of appeals, third circuit, in which the Securities and Exchange Commission has filed a transcript of the record upon which it has entered an order, cannot, on statements or even affidavits of counsel that a petition has been filed in the circuit court of appeals, second circuit, seeking review of the Commission's order, assume jurisdiction to grant the relief prayed for, when the petition, which is the sole basis for invoking jurisdiction, is not itself in the possession of the court; fundamental rules of jurisdiction and orderly procedure, as well as comity, forbid the court acting upon a petition which is in the possession of another court and which has not been transferred to it, p. 292.

[January 25, 1943.]

PETITION *to review order of Securities and Exchange Commission; application to court to take jurisdiction of petition for review filed in another circuit, denied.*

APPEARANCES: Seymour M. Heilbron, of New York city, for L. J. Marquis & Co. and others; Roger S. Foster, of Philadelphia, Pa., for Securities & Exchange Commission; C. R. Lowther, of New York city, for

Columbia Oil & Gasoline Corporation.

Before Maris and Goodrich, C. J., and Ganey, D. J.

PER CURIAM: In this proceeding Columbia Oil & Gasoline Corporation under the authority of § 24(a) of the Public Utility Holding Company Act of 1935, 15 USCA § 79x, filed on December 1, 1942, a petition to review an order of the Securities and Exchange Commission. On December 14, 1942, the Commission filed in this court a transcript of the record upon which the order complained of was entered. Previously, on November 16, 1942, L. J. Marquis & Co., Henry H. Abrams, Etta Schickler, and Stanley M. Arndt, alleging themselves to be aggrieved by the order of the Commission, had filed a petition to review it in the circuit court of appeals for the second circuit. The Commission, however, as we have said, filed the transcript of the record in this court and did not file it in the second circuit. On December 29, 1942, on motion of the Commission, the circuit court of appeals for the second circuit dismissed the Marquis petition for review for want of jurisdiction in view of the filing of the transcript in this court and on January 4, 1943, denied rehearing "without prejudice to the right of the petitioners to renew said motion in the event that the circuit court of appeals for the third circuit should not entertain jurisdiction of the instant petition to review."

[1] L. J. Marquis & Co. and its associates have now obtained an order from this court to show cause why, upon an affidavit of their counsel setting forth the facts above recited, this court should not pass upon their petition for review filed in the second circuit with the same effect as though it had originally been filed in this court. The order is not opposed by the Commission. We think, however, that it cannot be granted upon the record now before us. In so holding we do not doubt that this court, by reason of the filing of the transcript, has acquired exclusive jurisdiction over the order of the Commission which is involved in this proceeding. The express terms of § 24(a) so provide and the authorities are in accord. Okin v. Securities and Exchange Commission, Dec. 10 1942, 134 F(2d) 333; National Labor Relations Board v. Friedman-Harry Marks Clothing Co. (1936) 83 F(2d) 731; Hicks v. National Labor Relations Board (1939) 100 F(2d) 804; Standard Oil Co. v. National Labor Relations Board (1940) 114 F(2d) 743; Stanolind Oil & Gas Co. v. National Labor Relations Board (1940) 116 F(2d) 274; National Labor Relations Board v. Standard Oil Co. (1941) 124 F(2d) 895. It is true that all but one of the cited cases were decided under the National Labor Relations Act, 29 USCA § 151 et seq., but the language of that act on the point here involved is substantially the same as that of the Public Utility Holding Company Act.

[2, 3] The Public Utility Holding Company Act, however, requires that a petition to review an order of the Commission must be filed within sixty days after the entry of the order. It is, therefore, now too late to file such a petition in this court. Clearly it would be beyond our power to avoid the statutory limitation by granting leave to file a petition at this time, nunc

pro tunc. Nor may we on the statements or even affidavits of counsel that a petition has been filed in another court assume jurisdiction to grant the relief prayed for when the petition, which is the sole basis for invoking our jurisdiction, is not itself in our possession. Fundamental rules of jurisdiction and orderly procedure, as well as comity, forbid our acting upon a petition which is in the possession of another court and which has not been transferred to us either by the court having possession of it or otherwise by operation of the law. Moreover, even if there were authority for our considering a pending petition for review which is not before us, the fact is that the Marquis petition has been dismissed by the court in which it was filed. Consequently it presently presents no justiciable controversy either here or elsewhere.

It is clear that the act contemplates that Marquis and its associates should, if aggrieved, have a right to judicial review of the Commission's order. It cannot be denied that they acted seasonably and in full accordance with the law in filing their petition when and where they filed it. The difficulty in which they now find themselves is solely the result of the Commission's election to file the transcript in this rather than in the second circuit. It is hard to believe that this action by the Commission can deprive Marquis and its associates of the right of review which they seasonably invoked. The dilemma is one for which the act does not expressly provide and it may be one for the solution of which the parties must look to Congress.

On the other hand it may well be that Marquis and its associates could by intervention in the proceeding instituted in this court by Columbia Oil & Gasoline Corporation obtain the review of the Commission's order which they sought in the second circuit. No petition by them for intervention has been filed, however. Likewise the circuit court of appeals for the second circuit might, upon a rehearing of its order of dismissal and upon motion of the petitioners, conclude that it has power to reinstate the Marquis petition and transfer and transmit it to this court as the court having exclusive jurisdiction over the order sought to be reviewed. If this should be done it would seem that with a timely petition thus brought before us this court would have power to adjudicate it. But here again it must be noted that no such action has been sought in the second circuit.

The application of L. J. Marquis & Co., Henry H. Abrams, Etta Schickler, and Stanley M. Arndt to this court to take jurisdiction of their petition for review filed in the second circuit is denied.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Minneapolis Street Railway Company

[File No. A-5972.]

Parties, § 18 — Intervention by state.

1. An objection to the appearance of the attorney general in a rate proceeding, on the ground that the statute (Chap. 278, Laws 1921) does not provide for intervention by the state but defines the parties as the cities and the companies, should be overruled on the ground, among others, that the attorney general represents the public and that the public, as such, is interested in the proper outcome and would, therefore, be heard in the person of the attorney general, p. 295.

Return, § 108 — Street railway.

2. A return of 6 per cent on the rate base of a street railway company was held to be reasonable, p. 296.

Rates, § 519 — Street railway — Cash and token fares.

3. A cash fare of 10 cents and six tokens for 45 cents was held to be adequate, fair, and reasonable for transportation of persons by a street railway company in lieu of the existing cash fare of 10 cents and six tokens for 50 cents, held to be excessive, unfair, and unreasonable, p. 296.

Valuation, § 332 — Going concern value — Separate allowance.

4. No separate allowance for going concern value is required in a finding of reproduction value and original cost of property when that item is taken into account in making the foregoing valuations as a part of the integrated system of a company doing business and earning money, p. 297.

Valuation, § 30 — Rate base determination — Reproduction new values — Original cost — Decreased use.

5. Loss in service demands and consequent use of a street railway company's properties, owing largely to the increase in the number and the use of privately owned automobiles, is a factor properly taken into account in determining whether reproduction new values should have preference over the original cost of the property in determining the rate base, p. 298.

Valuation, § 101 — Accrued depreciation — Observation method — Accumulated reserve.

6. A deduction for accrued depreciation of street railway property was not limited to the amount determined by the observation method where a depreciation reserve had been accumulated at an average rate found not to be excessive and the depreciation reserve balance was found not to be in excess of the amount required to offset the accumulated loss in service life

of the properties, resulting in a reserve substantially in excess of the observed depreciation, p. 298.

[April 8, 1943.]

INVESTIGATION *of rates of fare to be charged by street railway company; reduction in token fares ordered.*

By the COMMISSION: On August 12, 1941, the Minneapolis Street Railway Company, hereinafter called the company, filed an application under Laws 1921, Chap. 278, with the Minnesota Railroad and Warehouse Commission, hereinafter called the Commission, for an order fixing and establishing rates of fare in the city of Minneapolis. The matter thereafter duly came on for hearing prior to the 26th day of September, 1941, when the taking of testimony was completed, and on the 6th day of November, 1941, the Commission duly made and filed its order in the premises directing that commencing November 7, 1941, and continuing during a trial period of approximately one year, the rates of fare to be charged by the company for the transportation of passengers within the city of Minneapolis should be 10 cents cash or six tokens for 50 cents but without any change in existing transfer privileges; and that on application of the city of Minneapolis, the company, or upon the Commission's own motion such rates of fare could be changed. or confirmed by further order of the Commission, as the actual experience under said rates and other evidence would then demonstrate to be just and reasonable.

Prior to the 15th day of February, 1943, the Commission of its own motion duly proceeded to reopen the above-entitled matter and held further hearings, which included the taking of testimony and oral argument and which terminated on the 19th day of March, 1943.

APPEARANCES: The state of Minnesota, by J. A. A. Burnquist, Attorney General, and Ralph A. Stone, Assistant Attorney General; The company, by James E. Dorsey (Fletcher, Dorsey, Barker, Colman & Barber, Attorneys, Minneapolis), Pierce Butler (Doherty, Rumble, Butler, Sullivan & Mitchell) and Ed Vaughn, Attorneys, St. Paul. The city of Minneapolis, by R. S. Wiggin, City Attorney, and John F. Bonner, Assistant City Attorney.

[1] At the opening of the hearing, Mr. Stone announced an appearance for the state of Minnesota by J. A. A. Burnquist, Attorney General, and himself, Mr. Stone, as Assistant Attorney General. There was then and thereafter no objection until near the close of the hearing when Mr. Butler objected that the statute (Chap. 278, Laws 1921) does not provide for intervention by the state but defines the parties as the cities and the companies.

The Commission then overruled this objection on the ground, among others, that the attorney general represents the public and that the public, as such, is interested in the proper outcome and would, therefore, be heard in the person of the attorney general and his assistant.

The entire record having been presented to the Commission, and having been duly considered, the Commission being fully advised in the premises

herewith makes and files the following findings of fact and order herein:

Findings of Fact

1. That the company is a corporation which was created and organized under the laws of the state of Minnesota; is a wholly owned subsidiary of the Twin City Rapid Transit Company, which also is a corporation of the state of Minnesota; and that for many years prior to the date of this order the company has been continually and now is engaged in the transportation of persons, for hire, over the streets of the city of Minneapolis, Minnesota.

2. That the undepreciated reproduction value of the properties of the company as of January 1, 1925, including working capital and material and supplies, as found by the Commission in its order of July 3, 1925, less going concern value, plus the actual cost of properties added, less the reproduction value of the properties retired from January 1, 1925, to January 1, 1943, was $29,737,315 as of January 1, 1943.

3. That the depreciated reproduction value of the properties of the company as of January 1, 1925, including working capital and material and supplies, as found by the Commission in its order of July 3, 1925, less going concern value, plus the actual cost of properties added, less the reproduction value of properties retired from January 1, 1925, to January 1, 1943, was $21,294,182, as of January 1, 1943.

4. That the undepreciated estimated original cost of the properties of the company, including working capital and material and supplies, as found by the Commission in its order of July 3, 1925, less going concern value, plus the actual cost of properties added, less original cost of properties retired from July 1, 1925, to January 1, 1943, was $25,785,502 as of January 1, 1943.

5. That the depreciated estimated original cost of the properties of the company, including working capital and material and supplies, as found by the Commission in its order of July 3, 1925, less going concern value, plus the actual cost of properties added, less original cost of properties retired from July 1, 1925, to July 1, 1943, was $18,514, 834 as of January 1, 1943.

6. That the existing accrued depreciation in the properties of the company includes the loss not restored by current maintenance due to all the factors causing the ultimate retirement of the properties; and that on January 1, 1943, such loss was 30 per cent of the depreciable reproduction value and 30 per cent of the estimated original cost of such properties.

7. That the present fair value or rate base of the properties of the company used and useful in rendering such local transportation service is $20,000,000.

[2] 8. That a rate of 6 per cent thereon is reasonable and will provide an annual return to the company of $1,200,000.

9. That the net operating income of the company for the year 1943, under the rates of fare herein prescribed, as applied to the present and prospective number of passengers which the company will carry in 1943, will not be less than $1,290,000.

[3] 10. That the present rates of

fare, namely a cash fare of 10 cents and six tokens for 50 cents, are excessive, unfair, and unreasonable.

11. That a cash fare of 10 cents and six tokens for 45 cents are adequate, fair, and reasonable.

ORDER

That effective at 12:01 A. M., April 11, 1943, the rates of fare to be charged by the Minneapolis Street Railway Company for the transportation of passengers within the city of Minneapolis shall be 10 cents cash or six tokens for 45 cents but without any change in existing transfer privileges.

A memorandum hereto attached is hereby made a part hereof.

MEMORANDUM

Going Concern Value

[4] That in the present finding of reproduction value and original cost of the property of the company, as hereinbefore stated, no separate amount was found or included, for going concern value; but that item was taken into account by the Commission in the making of the foregoing valuations as a part of the integrated system of the company doing business and earning money. Nothing more is required. State v. Tri-State Teleph. & Teleg. Co. (1939) 204 Minn 516, 546, 28 PUR(NS) 158, 284 NW 294; Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736.

Fair Value—Rate Base

The fair value of the company's properties for rate-making purposes was first found by the Commission in its order dated July 3, 1925, and fixed at $26,787,228. The company now claims an estimated original cost as of January 1, 1922, of $23,748,847; and with additions and retirements, as hereinafter set forth, claim further as of January 1, 1943, an original cost of $27,369,632.

Original Cost January 1, 1922 ...	$23,748,847
Cost of additions 1/1/22 to 1/1/25	1,786,771
1/1/25 to 1/1/43	9,873,582
Total Additions	$11,660,353
Cost of retirements	
1/1/22 to 1/1/25	415,929
1/1/25 to 1/1/43	7,623,639
Total Retirements	$8,039,568
Net cost of additions 1/1/22 to 1/1/43	$3,620,785
Original Cost January 1, 1943 ...	$27,369,632

However, adjusted to conform with the findings herein, to the effect that accrued depreciation is 30 per cent of the depreciable properties and that no separate amount should be included in the rate base for going concern value, the reproduction cost fixed by the Commission as of January 1, 1925, and the original cost claimed by the company as of January 1, 1925, when both are brought down to January 1, 1943, are found to be as follows:

	Commission Value	Company Original Cost
As of January 1, 1925	$30,393,726	$25,119,689
Net additions to property	927,719	2,249,943
Total undepreciated value 1/1/43	$31,321,445	$27,369,632
Less:		
Going concern value	$1,584,130	$1,584,130
Accrued depreciation	8,443,133	7,270,668
Total Deductions .	$10,027,263	$8,854,798
Rate base values 1/1/43	$21,294,182	$18,514,834

After careful consideration of all the facts presented to the Commission in regard to depreciation, going concern value, working capital, and of all other matters having a bearing upon the value of the properties of the company and the fair and reasonable value thereof for rate-making purposes, the Commission found, as above stated, that such fair value (rate base) as of December 31, 1942, was represented by the sum of $20,000,000.

The Commission feels confident, as to the fairness of this figure of $20,000,000, when there is considered the testimony of the company to the effect that the net income, available for return, of the company for the years 1927 to 1942, inclusive, aggregated $18,863,189; and when it is realized that such sum capitalized at 6 per cent will produce an average annual capitalized value of $19,649,155; and, furthermore, if such sum of $18,863,189 is capitalized at 7.5 per cent, being the rate of return claimed by the company, the average annual capitalized value would not exceed $15,719,324, or $4,281,676 less than the above valuation allowed by the Commission; that then justice has been done to all concerned in the finding of $20,000,000 as fair value.

[5] Further, it should be noted that the evidence before the Commission justifies the statement that the number of revenue passengers carried by the company decreased from 135,000,000 in 1922 and from 122,000,000 carried in 1925 to an annual average of 64,000,000 for the 4-year period 1938–1941, inclusive, or a reduction of 52 per cent; the number of car-miles operated decreased from 17,000,000 to 13,000,000 or a reduction of 24 per cent, and the number of revenue passengers per car-mile decreased from 7.2 to 4.7 passengers or a reduction of 35 per cent. Such loss in service demands and consequent use of the company's properties, due largely to the increase in the number and the use of privately owned automobiles, is a factor which the Commission took into account, and properly, in determining whether reproduction new values should have preference over the original cost of the property.

". . . The rate of return to be allowed in any given case calls for a highly expert judgment. That judgment has been entrusted to the Commission. . . .

". . . The consumer interest cannot be disregarded in determining what is a 'just and reasonable' rate. Conceivably, a return to the company of the cost of the service might not be 'just and reasonable' to the public. . . . If the establishing of new lines of transportation should cause a diminution in the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation, operating the road, should be allowed to maintain rates that would be unjust to those who must or do use its property. The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. . . ." Federal Power Commission v. Natural Gas Pipeline Co. *supra,* 315 US at pp. 607, 608, 42 PUR(NS) at p. 151.

Accrued Depreciation

[6] Depreciation accounting was

initiated by the company in 1904. The annual charges for depreciation expense during the intervening years, as shown by the evidence herein, were sums estimated by the management; and that for the street railway properties of the company, the annual charge to operating expense and credit to the depreciation reserve have been the same amount each year from 1917 to 1942, inclusive. The accrued depreciation claimed by the company was determined by the so-called "observation" method. However, "Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. . . . ." Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 167, 78 L ed 1182, 3 PUR(NS) 337, 347, 54 S Ct 658.

" . . . It is apparent that when a plant is new and retirements are infrequent, or when an established plant continues to grow by taking in more capital than is retired, that the yearly additions to the depreciation reserve will exceed over a period of years the annual deductions from the reserve. But in these cases, as well as in the case of a plant whose capital investment over a period of years is static, there must be some relation established or equilibrium struck finally between additions to and deductions from the reserve. Eventually, over a span of years, additions and deductions ought to offset each other while leaving in the reserve the amounts accrued during the initial years of operation when additions far exceeded retirements. . . .

"There must also be some relation between the amount in the depreciation reserve and the amount of actual depreciation which has accrued. That is, the per cent of the actual cost of the book value of the property which has been collected from the public to offset losses anticipated from future retirements ought not to be wholly out of proportion with the per cent of depreciation which has already overtaken the property." State v. Tri-State Teleph. & Teleg. Co. (1939) 204 Minn 516, 547, 28 PUR(NS) 158, 181, 284 NW 294.

As above pointed out, the accrued depreciation claimed by the company was determined by the so-called "observation" method. In regard thereto, the valuation engineer produced by the company testified: "The depreciation which I have found in this property is depreciation observed due to wear, tear and use, and it does not include the elements of obsolescence, inadequacy, changes in the art and changes required by city requirements."

The accrued depreciation amounts and the per cent which said amounts bear to the 1943 values of depreciable properties for the various rate base values submitted, were as follows:

Rate Base No.	Company Ex. No.	Value of Depreciable Property	Accrued Depreciation Amount	Accrued Depreciation Per cent of Value
1	11	$28,114,186	$3,606,498[1]	12.83
2	12	28,114,186	4,497,776	16.00
3	13	39,434,402	6,309,504	16.00
4	14	45,190,444	7,230,471	16.00

[1] The sum that the Commission found as of January 1, 1925.

and compared with the accrued depreciation amounts set out above, the actual accrued depreciation reserve credit balances and percentage ratios as of January 1, 1925, and January 1, 1943, were as follows:

	Original Cost of Depreciable Properties	Depreciation Reserve Credit Balance	
		Amount	Per cent
As of January 1, 1925	$22,020,271	$6,642,687	30.17
As of January 1, 1943	24,235,559	10,491,714	43.29

The evidence also shows that for the 1925–1941 17-year period, the total investment dollar years subject to depreciation, the total amount and annual per cent of the credits to the depreciation reserve, the total amount and annual per cent of the charges to the reserve for properties retired and the net accruals for the period were as set forth below:

Depreciable Investment	Way & Structures	Equipment	Power	Total
Dollar years	230,885,883	86,343,164	83,126,179	400,355,226
Depreciation Reserve				
Total Credits	$5,318,964	$3,269,164	$1,583,020	$10,171,148
Total Debits	3,249,604	3,223,792	555,489	7,028,885
Net Credit	2,069,360	45,372	1,027,531	3,142,263
Average Annual Rate	Per cent	Per cent	Per cent	Per cent
Credits	2.304	3.786	1.904	2.541
Debits	1.407	3.734	.668	1.756
Net Credit	.961	.056	1.326	.785

and that the cost of property retirements for the same period of years discloses that only a limited proportion of the properties having a long service life was retired.

A computation based upon original cost as of January 1, 1925, and the total original cost of properties retired, shows that the composite average annual retirement ratio for bridges, trestles and culverts, poles and fixtures, underground conduits, general office buildings, shops and carhouses, power plant buildings, substation buildings, power plant equipment, substation equipment and transmission system, the original cost of which, on January 1, 1925, amounted to $5,696,463, was only seven-tenths of one per cent.

From the facts above set forth, it is evident that the resultant composite average depreciation rate of 2.541 per cent was not an excessive rate; and that the net increase in the depreciation reserve balance was not in excess of the amount required to offset the accumulated loss in service life of the properties.

The testimony of the engineer of the company shows that the reproduction value of the depreciable properties on January 1, 1922, was $25,969,968, of which amount $19,186,805—or 74 per cent—was still in existence and in use on January 1, 1943.

At a composite annual rate of 2.5 per cent, the accrued depreciation for the intervening twenty-one years of expired service life would be 52.5 per cent of $19,186,805, or $10,073,073; however, the Commission found that the amount of accrued depreciation deductible from the reproduction value is only $8,443,133. The record also shows that since January 1, 1925, 30 per cent of the street cars of the company were retired; that the over-

all age of buildings is forty years; that the number of revenue passengers carried in street cars decreased from 135,000,000 in 1922 and 122,000,000 in 1925 to an annual average of 61,000,000 for the 4-year period 1938–1941, inclusive; that the number of car-miles then operated decreased from 17,000,000 to 13,000,000, a reduction of 24 per cent, and that the number of revenue passengers per car-mile decreased from 7.2 to 4.7, a reduction of 35 per cent.

The engineer of the company, when questioned in regard thereto, testified as follows:

Question—And your contention is that your reserve is adequate in the case of both companies?

Answer—My feeling is that it is inadequate to cover the entire depreciation in this property.

Question—Should the annual allowance for expense of depreciation be harmonized?

Answer—They should, if we are going to consider the elements of depreciation in determining the rate base, including the items of obsolescence, inadequacy, changes in the art, etc.

It follows that the methods which the company employed in determining the annual charge for depreciation expense did not produce a reserve balance in excess of the existing accrued depreciation due to all the factors which cause retirement of the properties.

In State v. Tri-State Teleph. & Teleg. Co. *supra*, the Commission refused to adopt the observed accrued depreciation, which the company claimed was 13.18 per cent of the cost of the depreciable properties, but gave consideration to all of the factors which cause property retirement. On that basis the Commission found that the accrued depreciation was 31.81 per cent of the cost of depreciable properties and was sustained therein by the court on appeal.

Taking into account the age of the properties, together with all the evidence relating to actual accrued depreciation, the Commission found, as above stated, that as of January 1, 1943, the accrued depreciation to be deducted from the cost or value of the depreciable property of the company is 30 per cent of the cost or value of the depreciable properties; and is convinced that the Commission is fully justified in so finding.

Operating Income

The actual operating income of the company for 1942, and the operating income as estimated by the state of Minnesota and the city of Minneapolis, as shown by the evidence, is as follows:

	Company's Actual 1942	State Estimated 1943 6 for 50¢ token rate	State Estimated 1943 6 for 45¢ token rate	City 1943 6 for 45¢ token rate
Total Operating Income	$7,062,683	$7,921,272	$7,292,817	$7,802,000
Expenses				
Operating expenses	4,648,391	5,043,416	5,043,416	5,324,000
Taxes—Other than income	541,043	541,043	541,043	1,140,000
—State and Federal income	556,130	663,035	379,401	
Rents and miscellaneous	46,181	38,970	38,970	46,000
Total Expenses	$5,791,745	$6,286,464	$6,002,830	$6,510,000
Net Operating income	$1,270,938	$1,634,808	$1,289,987	$1,292,000
Rate of return on Commission's fair value	6.35%	8.17%	6.45%	6.46%
Commission's fair value 1/1/43				$20,000,000

The estimate of gross and net operating income by the state of Minnesota was based upon the company's actual revenues, expenses, and net operating income for the months of September, October, November, and December, 1942. The estimate for 1943 of the city of Minneapolis was based upon the assumption that the company will carry 96,000,000 passengers in 1943. Certain allowances were made in both for prospective increases in operating expenses. In this connection, it is worthy of note that the company submitted no estimate for 1943 and did not offer any evidence to show that the estimates of the state of Minnesota and the city of Minneapolis, respectively, were subject to revision.

Evidence was also offered by the state of Minnesota tending to show that the number of revenue passengers carried in January, 1943, was 9,068,962, which amounts to an increase of 2,619,152 or 40.61 per cent over the number carried in January, 1942, and to an increase of 1,687,203 or 22.86 per cent over the average number carried in the last four months of 1942. The estimate of the state of Minnesota for 1943 was based on such evidence.

The evidence also shows that the number of passengers carried in February, 1943, over February, 1942, was approximately the same as for January, 1943, over January, 1942; and in this connection it should be noted that inasmuch as the company will charge and collect the existing token fare of six for 50 cents for three months in 1943, the net operating income of the company for 1943 will be substantially in excess of such estimate of the state of Minnesota and the city of Minneapolis when computed on the basis of a 10-cent cash and a six for 45-cent token rate of fare.

Finally it should be said that a 6 per cent return on a $20,000,000 rate base amounts annually to $1,200,000; that this sum is substantially in excess of the average annual net operating income of the company during the years subsequent to 1926; that during the 1927–1942—a 16-year—period, the average net income per year was $1,178,938; and that for the 1933–1942—a 10-year—period, the average was $967,608; that this sum last mentioned is $232,392 less than the amount which the company will be allowed to earn annually under provisions of this order; and that in addition thereto, car riders in the city of Minneapolis, under the fares herein prescribed, will furnish the funds to

pay state and Federal income taxes of the company in excess of $379,000.

There is attached hereto Appendix "A" and Appendix "B." Appendix "A" shows the number of cash and token fare revenue passengers carried, total passenger revenues and the average revenue or fare per passenger of the company for the calendar years of 1925 to 1942, inclusive.

Appendix "B" shows the actual net income earned by the company and the per cent of return earned on its claimed fair value for the calendar years of 1927 to 1942, inclusive.

[Exhibits omitted.]

EDITOR'S NOTE.—Similar rulings were made in Re St. Paul City R. Co. File No. A-5971, April 8, 1943.

SECURITIES AND EXCHANGE COMMISSION

Re General Gas & Electric Corporation

[File No. 70-679, Release No. 4226.]

Dividends, § 6 — Declaration out of capital surplus.

A registered holding company, pursuant to § 12(c) of the Holding Company Act, 15 USCA § 79*l*(c) and Rule U-46, was permitted to pay out of capital or unearned surplus a quarterly dividend on publicly held prior preferred stock where there was an earned surplus deficit but net income for the past year greatly exceeded the proposed dividend, assets in relation to the size of the proposed dividend were substantial, and no prejudice to security holders or the public was found.

[April 6, 1943.]

DECLARATION *as to payment of dividends out of capital or unearned surplus; permitted to go into effect.*

APPEARANCES: William W. Golub, for General Gas & Electric Corporation; Robert N. Hislop, for the Public Utilities Division of the Commission.

By the COMMISSION: General Gas & Electric Corporation, a registered holding company, has filed a declaration pursuant to § 12(c) of the Public Utility Holding Company Act of 1935, 15 USCA § 79*l*(c) and Rule U-46 promulgated thereunder. This declaration is concerned with a proposed payment out of capital or unearned surplus of a quarterly dividend on the publicly held $5 prior preferred stock of declarant. The presently proposed dividend is applicable to the quarterly period ended March 15, 1942.

Declarant has presently issued an outstanding 60,000 shares of $5 prior preferred stock. Of this issue, 27,889.1 shares are held by the trustees of Associated Gas and Electric Cor-

poration, the immediate parent of declarant. The balance, namely, 32,110.9 shares, are publicly held. The declaration includes a waiver on the part of the trustees providing that "should the declaration and payment of such dividend (i e., the dividend proposed in the declaration) be authorized by the Securities and Exchange Commission, and the dividend declared by the board of directors of your corporation, we hereby waive our right as the holders of 27,889.1 shares of such stock to collect such quarterly dividend . . . until further order of the Securities and Exchange Commission." The aggregate amount of this dividend, for the quarterly period, applicable to the publicly held stock is $40,138.63.

Since the books of Gengas, as at November 30, 1942, reflect an earned surplus deficit of $2,633,278.29, the proposed dividend is to be provided for out of capital or unearned surplus.

After appropriate notice, a public hearing was held at the request of a holder of cumulative preferred stock of Gengas. At the hearing no one appeared to oppose the proposed payment of the dividend. The Commission having considered the record makes the following findings:

Nature of Declarant

Gengas is a registered holding company and a direct subsidiary of Associated Gas and Electric Corporation, also a registered holding company, presently in reorganization pursuant to Chap. X of the Bankruptcy Act. Gengas owns, directly and indirectly, a controlling interest in a number of public utility operating companies.

As at November 30, 1942, the total assets and other debits of Gengas, per books, aggregated $33,063,383.94. Net income for the twelve months ended November 30, 1942, as recorded by Gengas, amounted to $342,476.50. A cash forecast for the year 1943, submitted by the company in connection with the instant declaration, indicates that on December 31, 1943, after making allowance for certain cash commitments, but before making allowance for any dividends, Gengas will have available a balance of $395,400. From such available cash declarant presently proposes to pay dividends approximating $40,125.

Factors Considered in Connection with the Declaration

In addition to the prior preferred stock of Gengas, which by its terms is senior to all other publicly held securities, there are various series of cumulative preferred stock of Gengas outstanding in the hands of the public, as well as substantial amounts of Class A common stock and a slight amount of Class B common stock.[1]

As at November 30, 1942, the $6 cumulative preferred stock had ac-

1 *General Gas & Electric Corporation Capital Stocks Outstanding As at November 30, 1942*

	Total Shares Outstanding	Shares Held By Public	Shares Held By System
Prior Preferred	60,000	32,110.9	27,889.1
Junior Preferred	655,614.75	20,645.75	634,969
Common:			
Class A	4,915,248.4987	2,29,3336.3757	2,621,912.1230
Class B	3,047,000	10,014.775	3,036,985.225

cumulated dividends in arrears in the amount of $58.25 per share; the $7 preferred stock, as at the same date, had accumulated dividends in arrears amounting to $67.67; and the $8 cumulative preferred stock had accumulated dividends in arrears of $77.33 per share.

This is the fifth time that Gengas has filed a declaration to pay a quarterly dividend on its publicly held prior preferred stock out of capital surplus. The principal factors which we have considered in permitting effectiveness to the four previous declarations were that the assets of Gengas in relation to the size of the proposed dividend were substantial and that at the present time the legal position of the prior preferred stock is prior to that of other public security holders. These same factors are persuasive in regard to the instant declaration.

The declaration contains as an exhibit a copy of the proposed notice to security holders to accompany the dividend payment, stating that the dividend is being paid out of capital surplus. This we consider appropriate under the circumstances.

We see no basis for the making of adverse findings regarding this declaration. An appropriate order will accordingly issue.

SECURITIES AND EXCHANGE COMMISSION

Re Peoples Light & Power Company et al.

[File Nos. 54-67, 59-64, Release No. 4227.]

Intercorporate relations, § 19.8 — Holding company simplification — Retainability of nonutility properties — Practice and procedure.

1. Findings defining the integrated public utility systems in a holding company system and determining which, if any, are retainable, are unnecessary for the purpose of an interim determination of the retainability of water and irrigation businesses under the "other business" clauses of § 11 (b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), upon application for such an order conforming with § 373(a) of the Internal Revenue Code as amended, including the recitals and specifications described in §§ 371(b), 371(f), and 1808(f) of the Internal Revenue Code, p. 306.

Intercorporate relations, § 19.6 — Holding company integration — Retention of water and irrigation properties.

2. Water and irrigation business are not retainable in a holding company system when they have no substantial relationships with any of the electric or gas operations of the system and, therefore, are not reasonably incidental or economically necessary or appropriate to electric or gas operations, p. 307.

[April 6, 1943.]

REQUEST by holding company, proposing to sell nonutility businesses to a public authority, for order conforming with provisions of Internal Revenue Code relating to retainability of properties; granted.

APPEARANCES: Sidney Shemel and Paul P. Eagleton, for the Public Utilities Division of the Commission; David S. Henkel, for the respondents.

By the COMMISSION: The Commission on March 9, 1943, instituted proceedings under §§ 11(b)(1) and 11(b)(2) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(b)(1), (2), against Peoples Light and Power Company ("Peoples"), a registered holding company, and its subsidiaries. These proceedings were consolidated for the purpose of hearings with those upon the application filed by Peoples with respect to a plan pursuant to § 11(e) of the act. The said consolidated hearing, at the request of Peoples, was postponed from April 1, 1943, to April 20, 1943.

On March 25, 1943, Peoples and Texas Public Service Company ("Texas"), one of its subsidiaries, filed an amendment to the said plan. Such amendment states that Texas proposes to sell its water and irrigation properties and businesses in Jefferson, Hardin, Liberty, and Chambers counties, Texas, to the Lower Neches Valley Authority, an agency of the state of Texas, for the sum of approximately $3,055,000 in cash.

[1] Peoples and Texas have requested that the Commission enter an order in these proceedings conforming with § 373(a) of the Internal Revenue Code as amended, which order shall require, authorize, permit, or approve the sale by Texas of the aforesaid water and irrigation properties in order to effectuate the provisions of § 11(b) of the act. Peoples and Texas have also requested that such order shall contain the recitals and specifications described in §§ 371(b), 371(f), and 1808(f) of the Internal Revenue Code as amended.

The Commission considers the above to be a request for an interim determination of the retainability of such nonutility businesses under § 11(b)(1) of the act, and for the entry of such order as may be required in the light of such determination.

After appropriate notice a public hearing in respect of this matter was duly held. Having considered the record herein, we make the following findings:

Peoples is a registered holding company controlling a group of subsidiary companies which operate electric utility properties in California, Oregon, Nevada, Idaho, Wyoming, and Texas, gas utility properties in Texas, and water and ice properties in certain of these states. Peoples also has one subsidiary company which is engaged in rice farming and owns no public utility properties.

Texas, the only electric and gas utility subsidiary of Peoples in the state of Texas, conducts its electric operations at La Grange and its gas operations at Austin, Texas. It also owns and operates water and irriga-

tion properties in the vicinity of Beaumont, Texas, which it proposes to sell to the Lower Neches Valley Authority, as above stated. These properties are described in detail in the contract dated March 31, 1943, and filed in this proceeding.

We have before us the problem of determining the retainability of the aforementioned water and irrigation businesses of Texas under the "other business" clauses of § 11(b)(1) of the act. Although we have not as yet defined the integrated public utility systems in Peoples' holding company system, nor determined which, if any, are retainable, such findings are unnecessary for the instant decision.[1]

[2] The record shows that the water and irrigation properties of Texas which are proposed to be sold to the Lower Neches Valley Authority have no substantial relationships with any of the electric or gas operations in Peoples' system. We are therefore unable to find that these water and irrigation properties are reasonably incidental, or economically necessary or appropriate to such electric or gas operations. Consequently, irrespective of what utility properties are determined to be the integrated public utility system or systems to which Peoples' holding company system must be limited, such water and irrigation businesses are not retainable in Peoples' holding company system. In fact, Peoples and Texas [Texas Public Service Co.] have admitted that these businesses cannot be retained under § 11(b)(1).

We, therefore, find that Peoples must cease to own or operate, directly or indirectly, any property or facilities now owned or operated by it through Texas Public Service Company for the purpose of conducting, directly or indirectly, any water and irrigation businesses in Jefferson, Hardin, Chambers, and Liberty counties, Texas. We also find that Texas must cease to own or operate, directly or indirectly, any properties or facilities for the purpose of conducting, directly or indirectly, such businesses.

It appears that the proposed sale to Lower Neches Valley Authority is in conformity with and will carry out our accompanying order which, in accordance with the above findings, will require that Peoples and Texas cease to own or operate, directly or indirectly, said businesses. We conclude, therefore, that such sale is necessary or appropriate to the integration or simplification of Peoples' holding company system and that said sale is necessary or appropriate to effectuate the provisions of § 11(b) of the act. Our order will reserve jurisdiction over the disposition of the proceeds of such sale.

An appropriate order will issue.

[1] See Re The United Gas Improv. Co. (1941) Holding Company Act Release No. 2913, 40 PUR(NS) 112.

SECURITIES AND EXCHANGE COMMISSION

Re The North American Company et al.

[File No. 59-10, Release No. 4235.]

Intercorporate relations, § 19.3 — Holding company simplification — Retainable property.

The retention of transmission lines and facilities belonging to a wholly owned subsidiary, by a parent whose principal business is the transmission and wholesale distribution of natural gas, is permissible under § 11 (b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), if the parent is dependent upon such lines and facilities and they constitute an integral part of its assets.

[April 9, 1943.]

REHEARING *on question of retention of transmission lines and facilities under § 11(b)(1) of the Holding Company Act upon receipt as to further proof as to propriety of retaining properties; order amended to permit retention. For earlier decision, see (1942) 43 PUR(NS) 257.*

APPEARANCES: Lawrence I. Shaw, Omaha, Nebraska, for Northern Natural Gas Company and Argus Natural Gas Company, Inc.; Henry C. Lank, for the Public Utilities Division of the Commission.

By the COMMISSION: On March 8, 1940, the Commission instituted proceedings pursuant to § 11(b)(1), 15 USCA § 79k(b)(1) against The North American Company and its subsidiaries.[1] By reason of the ownership by North American Light & Power Company, a direct subsidiary of The North American Company, of 35 per cent of the common stock of Northern Natural Gas Company, a registered holding company, the latter company and its two wholly owned subsidiaries, Argus Natural Gas Company, Inc., and Peoples Natural Gas Company, were made respondents in such proceedings, filed answers, and were represented at the hearings held in connection therewith. By order dated April 14, 1942,[2] we directed The North American Company and certain of its subsidiaries to take steps necessary to comply with § 11(b)(1) and in connection therewith directed Northern Natural Gas Company, hereinafter sometimes referred to as Northern, to dispose of its ownership, control, and holding of the securities and properties of Argus Natural Gas Company, Inc., hereinafter sometimes referred to as Argus.

On May 8, 1942, Northern filed a petition, amended May 27, 1942, to

[1] Holding Company Act Release No. 1960.

[2] Holding Company Act Release No. 3405, 43 PUR(NS) 257.

vacate that portion of our order of April 14, 1942, pertaining to it. Such petition was disposed of by an order[3] entered on June 25, 1942, directing that the record be reopened and a hearing convened for the limited purpose of receiving evidence as to Northern's retention of the transmission lines and facilities of Argus. Our findings and opinion in support of that order stated:

". . . Should proof of the facts alleged in the petition as heretofore noted be made, amendment of our order with respect to Northern's system may be appropriate. That order required Northern to divest itself of all securities and properties of Argus. If it should appear that Northern does, in fact, depend upon the transmission pipe lines now held by Argus for the transmission to Northern's directly owned pipe lines of substantial amounts of gas from Northern's gas leaseholds, it might be appropriate under the statute to permit Northern to retain these transmission lines. We have already found the pipe-line assets of Northern to be retainable in combination with Peoples, as a business reasonably incidental, or economically necessary or appropriate to the operations of Peoples; and we believe, consistency and good sense dictate that we should entertain evidence, not previously considered, which may show that the transmission lines now held by Argus are, in fact, an integral part of the pipe-line assets directly owned by Northern. We shall, therefore, direct the reopening of the record and further hearing for the limited purpose of exploring the relationship of the transmission lines now held by Argus to the business of Northern and Peoples."[3a]

Accordingly, the record was reopened for the limited purpose specified and a hearing was held on February 17, 1943.

The business of Northern consists of the transmission and wholesale distribution of natural gas;[4] its properties consist primarily of transmission, branch and gathering lines and gas leasehold estates. The transmission system extends from the Panhandle gas field in western Texas to Minneapolis, Minnesota, and conveys natural gas from that field and fields in western Kansas for distribution by nonaffiliate public utility companies and by the subsidiary, Peoples Natural Gas Company, to consumers in Nebraska, Iowa, Minnesota, North Dakota, and South Dakota.

Argus owns and operates a transmission system and distribution facilities in southwestern Kansas. Its transmission system consists of approximately 151 miles of main lines transmission lines, 73 miles of branch lines, and 24 miles of gathering lines. It is these transmission, branch, and gathering lines, together with town border stations that Northern is now

[3] Holding Company Act Release No. 3630.

[3a] We also stated, in part, in the opinion: "Nothing contained in Northern's petition indicates the need for reopening the record or considering any modification of our order as respects the distribution facilities of Argus. We have found that Argus, as a public utility system, cannot be retained together with Peoples, under the standards of clauses (A) and (C) of § 11(b)(1) and proof of all the allegations of the petition would not permit us to change that result."

[4] It also sells natural gas to farmers along its right of way, for drilling and pumping operations and to industrial consumers but is not a gas utility company within § 2(a)(4), 15 USCA § 79b(a)(4).

seeking permission to retain as part of its system.

About half of the gas requirements of Northern are produced in the Texas Panhandle field, the remainder being produced in the Hugoton, Otis, and Orth fields in Kansas. In 1940, 38 per cent of this remainder was taken from the Hugoton field. The Otis field is relatively small and is in a decadent stage. Rock pressure is dropping at the rate of 7 to 10 pounds per year and respondent states that the next winter season will be the last in which it can expect to maintain its present rate of withdrawal. Respondent obtains a relatively minor portion of its requirements from the Orth field by purchase from nonaffiliated interests. The Panhandle field has begun to show some drop in rock pressure but there is no indication that material diminution of flow is imminent. The Hugoton field is only partially developed and, in the opinion of the respondent, its leasehold estate in that field constitutes its sole reserve source.

At present, Northern has leaseholds to the extent of 182,000 acres in the Hugoton field, 8,310 acres of which are producing through thirteen wells, twelve of which are connected to Argus lines. Of this total acreage, 114,300 acres (approximately 63 per cent) are described by respondent as being traversed by, or adjacent to the Argus pipe lines. Said leaseholds consist of four separate blocks of acreage. The southernmost, comprised of about 42,000 acres traversed by the Argus lines and 67,800 acres along and south of Northern's lines, is the most extensive. There are ten wells located on the 42,000 acres all of which are connected to the Argus lines and there is one well on the 67,800 acres which is connected to Northern's line. The next largest block comprises about 32,000 acres along and adjacent to Argus lines at the northern extremity of the Hugoton field. There are presently only two producing wells on this second block, both of which are connected to the lines of Argus. The other two blocks of acreage of about 25,000 acres and 12,000 acres, respectively, are nonproducing and lie between the first described blocks and, while included by the respondent in the 114,300 acres described as being adjacent to Argus lines, are 15 miles remote from such lines. They are, however, much closer to the Argus lines than to any lines of Northern.

With the diminution of flow from the Otis field Northern expects to accelerate development in the Hugoton field to compensate for this loss of supply and to meet increasing demands. The record discloses that Northern's demands have been constantly increasing and that among its industrial consumers are several concerns engaged in substantial and important war production work. Respondent represents that if such development is carried out in the acreage adjacent to the Argus lines, the use of such lines will constitute the logical and least expensive method of delivering the output to the Northern system, and that regulatory and defense agencies have indicated that no new facilities will be authorized where present facilities are available. It further appears that Northern, to a considerable extent at present and to an increasingly greater extent in the

future, does and will depend upon the transmission facilities of Argus for the transmission to Northern's directly owned pipe lines of substantial amounts of gas from Northern's gas leaseholds. In the light of these circumstances we find that the pipe-line transmission facilities of Argus can logically be considered an integral part of the pipe-line assets directly owned by Northern and which we have previously found to be retainable in the system.

As of December 31, 1942, the property of Argus was carried on the books of that company in the amount of $2,364,835, of which, according to the statement of respondent, $1,302,374 is applicable to the pipe lines and gathering lines and town border stations which Northern desires to retain. Depreciation reserve is recorded by the company at $665,947, of which $484,058 is stated to be applicable to the property desired to be retained, resulting in net property (per books) of $818,316 proposed retention. If not required to dispose of these facilities, respondent proposes to make application for their purchase from Argus. The breakdown of Argus' property account between the property which we have found may be retained and that which we have found must be disposed of, will be fully explored at an appropriate later date.

It appearing that the transmission, branch, and gathering lines of Argus up to and including the town border stations constitute a logical addition to the Northern system and that their retention by Northern is in the interests of investors and the public, our order of April 14, 1942, *supra*, requiring divestment of all of the properties of Argus will be modified to permit retention of the transmission, branch, and gathering lines and town border stations.

An appropriate order will issue.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Pavilion Natural Gas Company

[Case No. 9458.]

Valuation, § 96 — Ascertainment of accrued depreciation — Adequacy of supporting evidence.

1. Depreciation estimates relating to gas properties as of a certain past date can be disregarded where testimony as to the expected lives and salvage value of the properties on which the estimates were based had little or no basis in the company records or other facts, p. 317.

Accounting, § 10 — Depreciation reserve — Retroactive revisions — Transfer to surplus.

2. A gas company which has reduced its retirement reserve which had accrued over a period of years may not retroactively transfer the difference to surplus without prior Commission approval, p. 318.

Accounting, § 10 — Depreciation reserve — Revisions — Transfer to surplus — Necessity of authorization.

3. A gas company seeking to transfer amounts from depreciation reserve to surplus as an adjustment of charges previously made to depreciation reserve must make the necessary prior application for Commission approval and assume the burden of supporting it with adequate proof, p. 319.

Accounting, § 10 — Depreciation reserve — Revisions — Unauthorized transfer to surplus — Retroactive authority.

4. A gas company which transferred amounts from depreciation reserve to surplus as an adjustment of charges previously made to depreciation reserve, without the required Commission approval, may not get such approval nunc pro tunc, particularly where many changes during the intervening years have been found to necessitate heavy charges to depreciation reserve, p. 319.

Accounting, § 10 — Depreciation reserve — Revisions — Correction of unauthorized entries.

5. Unauthorized transfers from depreciation reserve to surplus should be written off at once by further reduction in the stated value of the company's common stock, rather than by spreading them over periods in the future, p. 319.

Accounting, § 10 — Retransfer of reserves — Depreciation.

6. Amounts transferred from depreciation reserve to surplus without prior Commission authorization should be returned to reserve for depreciation, p. 320.

[April 1, 1943.]

REHEARING *of Commission order requiring gas company to reverse entries transferring amounts from depreciation reserve to surplus without prior Commission authorization; order affirmed.*

APPEARANCES: Gay H. Brown, Counsel (by Laurence J. Olmsted, Assistant Counsel) for the Public Service Commission; Griggs, Baldwin & Baldwin, by Charles G. Blakeslee, New York city, attorneys, for the Pavilion Natural Gas Company.

BURRITT, Commissioner: My report dated March 9th dealing with the original cost of this company's property in connection with its continuing property record was approved by the Commission on March 17, 1942. The report was served on the company without order prescribing journal entries, and the company was requested to advise the Commission what action it would take upon the recommendations made. On May 1, 1942, a letter was received from the company asking for a further hearing to present evidence on three points *(infra)* outlined in its letter. A further hearing was granted and held on June 8 and July 6, 1942.

On October 20th the Commission approved by supplemental memorandum dated October 13th, modifying somewhat prior recommendations. On the same day it also adopted an order prescribing journal entries.

Journal entry No. 4, which was the subject of this rehearing, is as follows:

Entry No. 4

200—Common Capital Stock—Dr.	$92,429.85	
Earned Surplus—Dr.	103,729.77	
250—Reserve for Depreciation of Gas Plant—Cr.		$196,159.62

"To reverse entries transferring amounts from the depreciation reserve to Surplus and from Surplus to the account for Capital Stock. This adjustment made in accordance with order of the Commission dated October 20, 1942, in Case 9458."

On November 12th the company applied for and was granted a rehearing in this proceeding. Hearings were held at New York city on December 28, 1942, and February 8, 1943. The bases for the further hearings held in June and July, 1942, as set up in the company's letter of May 1, 1942, were the presentation of further evidence in relation to:

1. The purchase of the property and the capital stock outstanding of the Pittsburgh Gas & Fuel Company.

2. The construction of the transmission line connecting its system with the Newfield company.

3. Proposals relative to a write-down of capital stock to meet write-off directed by the Commission in which the company would under certain conditions acquiesce (certain conditions referred to in this paragraph were a partial write-down such as would avoid a deficit in surplus).

In the latest hearings in December, 1942, and February, 1943, no further testimony was presented on Items 1 and 2 above, so that it may be assumed that the company raises no further questions as to these determinations. All the testimony at the hearings of December 28, 1942, and February 8, 1943, was directed to this matter of a reduction of the common stock and restoration of the amount of the write-up to Depreciation Reserve and Surplus.

The concluding paragraph of recommendations in my supplemental report of December 2nd was as follows:

"3. That the company be required to reverse the transfer of $196,159-.62 made from Retirement System to Surplus in 1926 together with transfer from Surplus to Stated Value of common stock of that portion of the Earned Surplus representing Retirement Reserve ($92,429.85). The further suggestion is made that the company increase its proposed transfer from the Stated Value of Common Stock to an amount sufficient to wipe out the deficit in surplus."

For convenience and understanding the facts on which the original action of the Commission in this matter was based and the issue involved in this rehearing, my report on this item is quoted in full from page 42 to 44 of the original memorandum of March 9, 1942.

Depreciation Reserve

"When the stock of the Pavilion Company came into the possession of its present owner, the Genesee Valley Gas Company, the new management undertook considerable revision of the accounts of the company. From 1909 to September 15, 1926 depreciation had been computed by the company on the straight-line basis. In 1926 the new management changed the basis of depreciation accruals from straight line to a percentage of annual

gross revenue. From September 16, 1926, through 1927 the accrual was 12½ per cent of annual gross revenue. For the period 1928 through 1937 the accrual was 6 per cent of annual gross revenue. This change in policy resulted in smaller credits to the reserve after 1926 as compared with the years prior to 1926. The plant balance was substantially increased in this latter period due to the construction of the water gas plant at Pavilion.

"In addition to revising the policy with respect to annual accruals, the new management, in 1927, adjusted all accruals prior to September 15, 1926 to 12½ per cent of a gross revenue. As of December 31, 1926, there had been credited on the books an amount of $477,581.59 as depreciation. The recomputation of depreciation by the new management was alleged to show that $281,421.97 was sufficient depreciation on the new basis. This left an excess of accrued depreciation as determined by this method of $196,159.62. In 1927 this sum, stated to be 'an adjustment of depreciation accruals for the period January 1, 1907 to December 31, 1926 to reduce same to equal 12½ per cent of the gross revenues,' was debited to depreciation reserve and credited to surplus.

"The company's position as to this transfer as stated by its counsel, is:

" 'The transfer to surplus from depreciation reserve of the sums of $196,160 made in December, 1927, but as at December 31, 1926, was a proper adjustment of charges previously made to depreciation reserve, and Pavilion contends that such transfer should obtain the approval of the Commission.'

"This transfer was made without reference to the Commission at the time and has never been approved. The company's statement apparently recognizes that such approval should have been obtained, and now asks for it nunc pro tunc. The attention of the witness was called to the provision of Account 251—Retirement Reserve, in the 1923 System of Accounts, under which the company was then operating, and which provides: 'no portion of the amount reserve for retirement shall be diverted to surplus or other use made thereof except as above provided without the approval of the Commission.'

"This transfer having been made without authority is therefore void and of no effect and should be reversed. Nor do the facts warrant such a transfer, and approval of it should not now be given."

Company's Proof on Rehearing

The Pavilion Gas Company distributed straight natural gas of about 1000 BTU content from its own wells from the date of its organization to September 1, 1926. By this time the natural gas supply had diminished considerably. On or about that date with the consent of the Commission the Genesee Valley Gas Company acquired the $100 par value stock of the Pavilion Company at a price of $330 per share and began the construction of a manufactured gas plant in which Pavilion's remaining natural gas supply was utilized as an enricher only. The pull on its gas wells was thus reduced. The first water gas set was installed in 1927 and the second set in 1928. From 1927 the company continuously furnished a mixed gas

with a 537 BTU content up to 1937 when a supply of natural gas from the Cabot Gas Corporation became available.

As set forth fully in my prior reports, at the time of the acquisition of the stock of the Pavilion, the new owners claimed that the rate of depreciation accruals on the books was excessive, reduced this rate of accrual to 12½ per cent of revenue, and recalculated the accruals back to 1907 on the new basis. The difference between the depreciation reserve appearing on the books and the retroactively calculated depreciation for the period from 1907 to September 15, 1926, or $196,844.50 was then (December, 1927) transferred by journal voucher No. 13 from Reserve for Depreciation to Surplus.

It was claimed by the company that accrual at the new rate of 12½ per cent of revenue for this period was equivalent to more than 7 per cent of fixed capital before and about 3 per cent after the $196,844.50 had been transferred from Depreciation Reserve to Surplus. The further claim was made that the alleged excessive depreciation accruals had resulted in a deficit in Surplus of $112,595.21 as of September 15, 1926. The result of the transfer of $196,844.50 made by the company in 1927 was to wipe out the profit and loss deficit existing at the time and the setting up of an Earned Surplus of $84,249.29. In addition, by reason of the cancellation of the amount claimed to be due the Independent Gas Company (see memo of October 9th) and Contributions of $100,000 by that company, together with other minor adjustments, a capital surplus of $403,582.52 was claimed to have been created. The calculations on which the above transfer was based were attached to and filed with Journal Entry 13 (Exh. 34) at the time of the transaction.

Based on the Fixed Capital calculations and the depreciation accruals attached to and supporting journal entry No. 13, the company presented as Exhibit 35 a tabulation of earnings for the years 1921 to 1925 and to and including September 15, 1926, purporting to show that the Pavilion Company had increased its reserve for the amortization of capital by $250,297.03 during this period and that the book result of operations for this period was a deficit in surplus of $141,815.21. From these figures the witness White then claimed that of the 6-year accrual of $250,297.03 to the Reserve, only $108,481.82 could have been obtained from earnings and that the balance of $141,815.21 must have come from Surplus.

The transfer of $196,844.50 from Reserve to Surplus has never been approved by the Commission. Furthermore, it nowhere appears that the Pavilion Company made specific application to the Commission at any time prior to 1942 for such approval. Nevertheless, the company maintains that the Commission knew of the transfer and that the matter was before it. Witness White cited correspondence with the secretary in 1928 and 1929. In a letter dated November 19, 1928, written in connection with the examination of annual reports, the secretary advised the company as follows:

"Page 30. Please advise fully the reason and basis for the credit to Surplus of $196,844.50, which amount

was concurrently charged to Retirement Reserve. In this connection attention is directed to the accounting classification which provides that no portion of the amount reserved for retirements shall be diverted to surplus without the approval of the Public Service Commission."

The company further points out that in connection with its application made on March 21, 1929, in Case 5325 for permission to issue $496,830.15 face amount of 6 per cent mortgage gold bonds, it furnished the Commission with balance sheets reflecting the above transfers from Reserve to Surplus and with these balance sheets before it the Commission authorized the issuance of $496,830.15 of such bonds of which $480,000 are now outstanding. Attention was also called to a note which had been placed on the balance sheets (it was not on the balance sheet submitted in Case 5325 in 1929) reading as follows:

"Without the transfer from Retirement Reserve to Corporate Surplus, there would have been a deficit in Corporate Surplus as of September 15, 1926, of $104,147.02 and a deficit in Corporate Surplus as of August 31, 1928 of $58,601.72."

It was further pointed out that the Secretary of the Commission had advised the company by letter dated February 21, 1929, that:

"The matter of adjustments in Retirement Reserve and in Corporate Surplus will be made the subject of a separate communication."

Again on February 23, 1929, the Secretary of the Commission informed the Pavilion Company among other things that:

"In view of the fact that there is pending a petition in Case 5325 which will undoubtedly necessitate both an accounting and engineering survey of the records and property of the respondent, a special investigation relating to these surplus adjustments will not be initiated at this time but will be considered in connection with the formal proceeding."

In this letter the secretary further informed the company that a notation should be made in its 1927 report[1] as to the balance sheet, as follows:

"Reported balances at December 31, 1927, in accounts representing Retirement Reserve and Profit and Loss in Surplus include a transfer from the former to the latter of $196,844.50, which transfer was made without the approval of the Public Service Commission. The items shown therefor will be considered as tentative only until the Commission has passed upon the propriety thereof."

It appears that this question was not reported to or passed upon by the Commission for a period of at least ten years and that no report was made by the Accounting Division of the Commission in regard to the matter during that period. On October 30, 1939, a field report of the accounting division dated May 23, 1938, made in connection with Case 5325 was served upon the company. This report is also Exhibit 1 in this proceeding (Case 9458).

Among other things this report contained the statement that:

"The engineering division is also requested to report upon the ac-

[1] No such note in the Balance Sheet in Company's Annual Report for 1941.

crued depreciation on the property of the petition as of January 1, 1938."

In a reconciliation with the continuing property record in this proceeding the company shows that the amount of $505,408.02 is now carried in its fixed capital accounts (Accounts 101 and 104) representing the property installed prior to September 1, 1926, and surviving at January 1, 1938. No determination of the depreciation existing in this company's property has been made by the Commission during the period from 1926 to 1938, the date of the continuing property record.

Testimony on Depreciation

[1] Upon the rehearing the company made a weak attempt to show that the depreciation in its property was in 1926. It presented as a witness Mr. Harry Barker, of Barker and Wheeler, a reputable engineer who has frequently appeared before this Commission principally as representing municipalities. Mr. Barker testified and offered computations purporting to show "the amount of retirement reserve which I think they should have had in September, 1926, to meet the accruing depreciation on the property they had at the time." He estimated the expected lives of the different classes of property and the salvage expected to be realized. From this he developed percentages and amounts of annual and accrued depreciation which he applied on a so-called straight-line basis.

When asked by his counsel as to whether his result "measures the depreciation as of September 15, 1926 in any way, shape, manner, or form," he replied that he "did not think that that statistical figure for a required depreciation reserve is necessarily a measure of the depreciation itself . . . it is a spread of that cost over the life uniformly. It is a convenient way of setting aside the funds to repay the company for its sacrifice of capital."

On cross-examination the witness admitted that he did not see the property in 1926, although he claimed to have been "familiar with that territory more or less for a good many years." He drove over the area late in 1942 to refresh his recollection, spending one day there. He stated that he made his own study but that the information he had was very meager. He made no detailed examination of the company's records; he said that he examined the company's annual reports to the Commission but could not remember what ones; he had no specific well pressures in mind; he did not have any figures in his working papers. His memory was short on several points.

He testified that as a basis for his estimate of service lives he terminated the lives of Pavilion wells in 1952 and estimated that the Cabot gas supply would last one or two years after 1942. He made no use of the extensive data on gas produced, purchased, and used over a long period of years which the company had and which the Commission staff later introduced in evidence. The lives assigned to various units of property by Mr. Barker were arbitrary and unsupported by any definite data. It was "just judgment" unsupported by facts.

This horseback estimate of depreciation can be given little weight. The witness himself did not believe that

his mechanical processes were a measure of depreciation. To the small extent that the judgment of the witness was used—as in the estimated lives of classes of property and salvage—it has little or no basis in company records or other facts. This testimony may be disregarded as showing the depreciation existing in the property in September, 1926.

Allegations of the Company

In its petition for rehearing dated November 10, 1942, company counsel set up six errors which he alleged had been made by the Commission in its order of October 20, 1942. Each of these will now be considered. It is alleged that the Commission erred:

(A) In holding and deciding that the "Reserve for Depreciation" as of December 31, 1937, was in either year, inadequate or less than required depreciation reserve, or in directing that any amount should be transferred to Depreciation Reserve from Surplus as of December 31, 1937.

This allegation is not substantiated by the facts. At no time has the Commission held or decided that "Reserve for Depreciation" at any date from 1926 to 1942, inclusive, was or is either adequate or inadequate. The adjustments of the reserve shown on the balance sheets attached to my report of October 13, 1942, which were discussed in that report and in the report of March 9, 1942, and reflected in the Commission's order of October 20, 1942, are book adjustments made necessary by retirements by charges to the reserve which are discussed in detail and which have been accepted by the company and by the reversal of the unauthorized transfer from reserve to surplus. No study of the accrued depreciation actually existing in this company's property has been undertaken and no determination of depreciation has been made during the period in question.

[2] (B) That in making its order in connection with the transfer from Retirement Reserve to Surplus as of December 31, 1927, the Commission acted without authority of the statute and wholly without evidence to sustain its findings and beyond its jurisdiction, and by applying illegally and retroactively certain alleged requirements contained in its System of Accounts for Gas Companies effective January 1, 1938.

This allegation is principally a legal conclusion. The only finding made was that the company had no authority to make the transfer from Reserve to Surplus and had, therefore, itself acted illegally and without authority to make the transfer for which approval of the Commission was required by the system of accounts (Account 251, 1923 System, and Account 251–Note, 1938 System). In spite of repeated advice to this effect, the company made no definite application prior to 1942 and continued to carry on its books the items illegally transferred.

While it is true as stated by counsel that under the systems of accounts in effect during the period from 1907 to 1926 the company had the right to select the amounts which it would accrue to retire its fixed capital, it by no means follows that, having made such a decision as to the amount to be accrued, having charged the annual accruals to its operating expenses, and having reduced these accruals to a

smaller amount, the difference should then be retroactively transferred to surplus. Such a transfer is specifically prohibited by the system of accounts without *prior* approval of the Commission.

[3, 4] (C) In directing a transfer from Surplus to Depreciation Reserve as of December 31, 1937 or as of January 31, 1942, without any evidence to support either of said findings, or without evidence to support a finding that the retirement reserve set forth on the company's books as of December 31, 1927, and the Depreciation Reserve as set forth on the company's books as of January 31, 1942 was not a reasonable, proper, and adequate amount for all purposes for which such reserves were required.

This allegation is a curious twisting of the facts. As previously pointed out the Commission made no finding that the depreciation reserve of the company was or was not a reasonable, proper, and adequate amount. It was not required to do so. The obligation was on the company to make the necessary prior application for approval and to assume the burden of supporting it with adequate proof. It did neither. It should not now be heard to complain about a situation resulting from its own neglect. The future consideration of the matter promised by the secretary has now been given and it is determined that approval of the transfer nunc pro tunc should not be given as of December 31, 1927. Further, as has subsequently appeared, many changes have occurred during the intervening years and heavy charges to the reserves have been found necessary in this investigation. These facts make even more questionable the propriety of a transfer from Reserve to Surplus, and require adequate proof as of the present time which has not been presented.

(D) The Commission erred in applying the provisions of its Uniform System of Accounts for Gas Companies effective January 1, 1938, and the requirements expressed therein relating to reserves for depreciation to the reserve accounts of the Pavilion Natural Gas Company which had been created for corporate purposes in accordance with the two existing and effective Uniform System of Accounts for gas companies prior to the promulgation of the new Uniform System of Accounts for Gas Companies effective January 1, 1938.

This allegation is an erroneous conclusion. The provisions of the prior systems of accounts and of the system of January 1, 1938, are the same in respect to requirements for prior Commission approval. This point has been further discussed under allegation (B).

[5] (E) That the Commission erred in applying to the books, accounts and records of the Pavilion Natural Gas Company requirements ostensibly in accordance with the Uniform System of Accounts for Gas Companies effective January 1, 1938, different from those applied to other regulated gas companies in like situations in that if the said Uniform System of Accounts for Gas Companies effective January 1, 1938, is proper and legal it must be applied uniformly to all gas companies.

The reference is to the proceeding on motion of the Commission as to the propriety and accuracy of the ac-

counts, books, and records of the New York & Richmond Gas Company (Case 8700) (See [1938] 23 PUR (NS) 463) and to the opinion of the Commission approved May 12, 1941, in which that company was authorized to present a plan for the amortization of some $400,000 rather than to write off this amount against its surplus or to make further reductions in the values of its common stock or surplus.

The situation in the New York and Richmond Gas Company Case is quite different from that of Pavilion which we have before us. In that case the large balance for further disposition was made up principally of reductions in utility plant accounts some of which were properly chargeable to Plant Acquisition Adjustments. In this case the item in question is an improper and unauthorized transfer from reserve to surplus and the account Plant Acquisition Adjustments has no applicability. As pointed out in the New York and Richmond Case, it is always preferable to write off the whole amount of such questionable items at once by a further reduction in the stated value of the common stock rather than to spread them over periods in the future. In the case of Pavilion a reduction in the stated value of common stock sufficient to eliminate the deficit in surplus could readily be made by stockholders, and to do so would result in a balance sheet which would set forth the facts accurately.

(F) That the Commission in refusing to accept in evidence exhibit marked for identification as Exhibit 26 showing accrued depreciation of fixed capital of the Pavilion Natural Gas Company installed prior to September 15, 1926 arrived at by the use of annual depreciation the rates approved by the Public Service Commission in other cases involving gas companies in connection with mains, services, meters, and other classes of identical property, as that of the Pavilion Natural Gas property.

Exhibit 26 is a statement of the fixed capital of the Pavilion Gas Company installed prior to September 15, 1926, to which company's witness White applied the annual depreciation rates set up by Mr. Hine for the property of the Brooklyn Borough Gas Company (Case 10131) and adopted in the opinion approved by the Commission May 12, 1941. I refused to receive this exhibit in evidence. No similarity of the two properties or of the soil and other conditions had been shown. Nor had the depreciation rates used by Mr. Hine for the property of the Brooklyn Borough Gas Company been shown to be properly applicable to the property of the Pavilion Gas Company.

Conclusion

[6] After a careful review of all of the points raised by the company and its evidence upon rehearing, I find that the company has failed to support its allegations of error and to justify the transfer of any amount from Reserve to Surplus either as of 1927 or as of 1942. I, therefore, conclude that the order of the Commission dated October 20, 1942, in this proceeding should in all respect be confirmed and approved. It is so recommended and an order is submitted accordingly.

Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Largest 3,600 RPM Turbo-Generator Goes to Work

The largest turbo-generator of its type ever built, capable of producing 65,000,000 watts of electricity has just gone into operation for the Bureau of Power and Light at Los Angeles Harbor, according to Westinghouse Electric & Mfg. Company.

The spinning shaft of the turbine turns at 3,600 revolutions per minute, and is rotated by jets of steam bombarding the blades thousands of times a minute. This steam is heated to 900 degrees Fahrenheit, more than four times as hot as boiling water, and exerts a pressure of 850 pounds per square inch on the blades, machined to watchmaker precision. At peak speed, the tips of the blades on the shaft, having a maximum diameter of about 6½ ft., travel at the approximate rate of 850 miles per hour—about 100 miles an hour faster than the speed of sound.

The turbo-generator was built by Westinghouse Electric & Mfg. Company, in approximately two years and two months at Westinghouse plants in East Pittsburgh, Pa.—the generator—and South Philadelphia, Pa.—the turbine. Its cost was more than $1,000,000.

Aldine Introduces New Sweat Band

Aldine Paper Company has recently developed a new sweat band which is designed to give employees greater comfort for hot weather work or where plant heat conditions cause discomfort.

The outside covering of patented process insoluble Aldex is said to assure silky-cool nonirritating forehead contact. Aldex itself and the cellulose fibre filler within the band absorb perspiration immediately on contact.

Made entirely from noncritical material, the Aldex sweat bands are claimed to fit any size head, maintain their shape even when saturated, and are rugged enough for rinsing, drying and re-use. They are priced at $6.50 per hundred.

Literature and samples may be obtained from the manufacturer, 373 Fourth Ave., New York city.

Todd Company Manufactures Form-Master Entirely of Wood

The freezing of vital materials was no deterrent to The Todd Company, Rochester, N. Y., check and checkwriter manufacturers, in their desire to continue the fabrication of a payroll form-holding device. The device, known as the Form-Master, which, according to a recent survey, saves 61.6 per cent of man-hours in payroll departments, is now made entirely of wood. The new design is also said to make possible many improvements in operation. Because of the elimination of vital materials, the company is continuing to fabricate the device and to install it in war plants where it is claimed, its use has already reduced man-hours, assured more accurate posting of payroll records, and alleviated the burden of payroll work entailed by increased employment.

The Form-Master is a form-holding device used to expedite the posting of payroll data. Through its use employees' checks or cash payroll statements, payroll summary

★ ★ HIGHWAY TRANSPORT . . . VITAL TO VICTORY AND THE AMERICAN WAY OF LIFE ★ ★

War Plants where Wheatfields Grew

When Pearl Harbor electrified America to action, this field of wheat became a war plant, almost over night. Across the nation, in the outskirts of scores of industrial cities, this transformation has taken place hundreds of times since war started. Motor Trucks, not waiting for rails or right-of-way, rushed up the materials to build these plants . . . today bring in their raw materials and carry away their weapons of war. Motor Coaches, needing neither track nor trolley, furnish fast and flexible transportation for workmen from all surrounding communities.

A survey of 741 war plants showed that 65% of incoming and 69% of outgoing freight moved by truck. Coach lines serving many of these plants carried 31 million more passengers in 1942 than in 1941.

Joseph B. Eastman, director of the Office of Defense Transportation, recently stated: *"Automotive Transportation is absolutely essential to the winning of the War. Goods must reach their destinations and workers must get to their jobs . . . on time."* Join the U. S. Truck Conservation Corps and keep your trucks in best possible condition. Your GMC dealer is pledged to help you.

Pledged U. S. TRUCK CONSERVATION CORPS

INVEST IN VICTORY . . .
BUY WAR BONDS AND STAMPS

GENERAL MOTORS TRUCK & COACH

DIVISION OF YELLOW TRUCK & COACH MANUFACTURING COMPANY

Home of GMC Trucks and Yellow Coaches • • • Manufacturer of a Wide Variety of Military Vehicles for our Armed Forces

***Equipment Notes* (*Cont'd*)**

sheets, and individual earnings records—source material from which government reports are compiled—are posted at the same time. This procedure, involving three simultaneous postings, obviates the necessity of individual postings and likewise eliminates copying errors. Payroll departments employing the Form-Master are able to operate on reduced staffs and to release many employees to vital defense operations.

Fluorescent Fixture of the Future Here Today

Sylvania Electric Products Inc. presents a new industrial type fluorescent lighting fixture which not only incorporates every feature of the present line but includes many features that point the way to future fixture design, according to a recent announcement. It also meets the latest critical material weight requirements of the War Production Board. The first unit designed to operate two or three 40-watt lamps will be shortly followed by a companion unit for a pair of 100-watt fluorescent lamps.

The new unit so fully utilizes every ounce of limited critical steel that even the ballast is completely enclosed to contribute to the safety and cleanliness of the unit as a whole. The nonmetallic reflector, finished on the outside in industrial French grey to match the top-housing, has a reflecting surface of Sylvania's own miracoat which makes it even more efficient than its predecessor—porcelain enamel on steel.

Catalogs and Bulletins

New Automotive Brake Lining Catalog

Operators of automotive fleets are offered a new 44-page catalog of pressure-moulded brake linings.

The new book, issued by Grizzly Manufacturing Company, contains recent and complete size and number data on roll and heavy duty block linings as well as multiple coverage segments for both internal and external applications.

Listings are conveniently arranged by make and model of vehicle and include sizes for every truck, trailer, tractor and passenger car as well as many types of industrial equipment.

A copy may be obtained from your local Grizzly automotive distributor or will be mailed direct upon request addressed to Grizzly Manufacturing Company, Paulding, Ohio.

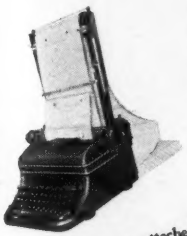
"Fire and How to Fight It"

A new departure in company-sponsored publications is the basic fire-fighting booklet just issued by Walter Kidde & Company, Inc., entitled "Fire and How to Fight It."

This 36-page illustrated manual describes in simple, graphic terms the fundamental facts about fires and their control—what makes them burn, the different types of fires and the proper handling of each. All the usual varieties of extinguishers, whether of Kidde or competing makes, are covered—soda-acid, water, foam, vaporizing liquid, dry compound, and carbon

4 WAYS

IN WHICH EGRY BUSINESS SYSTEMS HELP MEET THE TYPEWRITER SHORTAGE

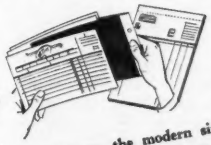


1

RY SPEED-FEED may be attached to standard make typewriter in one minute, with Egry Continuous Forms, doubles output of the operator—makes one machine do the work of two.

2

EGRY TRU-PAK Register speeds the writing of all handwritten records. Assures control over every business transaction.



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EGRY ALLSET Forms, the modern single set forms for speed writing all business records. Individually bound sets, interleaved with one-time carbons, ALLSETS are ready for immediate use either over the typewriter or when written by hand.

4

EGRY CONTINUOUS Forms increase the output of operators by 50% and more because they eliminate many time-consuming operations. Furnished with or without interleaved one-time carbons.

The shortage of typewriters and the decrease in office help are being met successfully through the use of Egry Business Systems which have been developed to an exceedingly high degree of usefulness. Whether your records are written on the typewriter, billing machine or by hand, there is an Egry System for every departmental activity. Egry Business Systems save time, money and materials, and afford complete control over every recorded transaction. To fully appreciate their adaptability to your business, you should see them in action right in your own office. Free demonstrations may be arranged at your convenience. Complete information will be sent on request. There is no cost or obligation. Address Department F-722.

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THE EGRY REGISTER COMPANY • Dayton, Ohio

EGRY CONTINUOUS FORMS LIMITED, King and Dufferin Sts., Toronto, Ontario, Canada.

Egry maintains sales agencies in all principal cities.

Catalogs & Bulletins (Cont'd)

dioxide—and brief but explicit directions given for their use and maintenance.

"Fire and How to Fight It" will be sent free on request to Walter Kidde & Company, Inc., 140 Cedar Street, New York 6, N. Y.

Boiler Feed Water Conditioning and Chemistry

"Boiler Feed Water Conditioning and Chemistry" is a new publication issued by the Cochrane Corporation, Philadelphia, which deals with the most common processes used in feed water conditioning, and a discussion of such important factors as the characteristics of the hot process water softener, zeolite softener, removal of gases from boiler feed water, embrittlement and carry-over.

In addition, there is a section devoted to interpretation of water analyses, conversion factors, chemical reactions, tables showing the formula, molecular weights, equivalent weights of all the chemicals commonly found in water conditioning practice.

Copies of this publication (No. 4008) may be obtained from the manufacturer.

Manufacturers' Notes

A-C Appointment

To head the busy marine division of its steam turbine department, the Allis-Chalmers Manufacturing Company has named as manager, W. A. Yost, Jr., formerly with the Elliott Co. of Jeannette, Pa.

Mr. Yost was manager of the Elliott Company's turbine department when he left the eastern firm for his new position with Allis-Chalmers. He had been with the Elliott Company for 16 years.

In his new position, Mr. Yost will have charge of the greatly expanded production of marine propulsion and auxiliary generating equipment which Allis-Chalmers is providing for many types of Navy ships and for the U. S. Maritime Commission's Victory ship program.

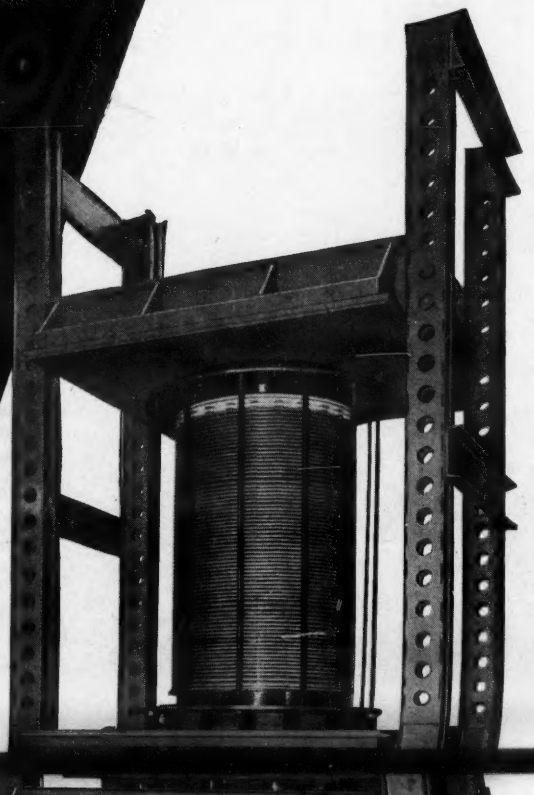
War Posters Selected as Representative of Industry's War Effort

The National Association of Manufacturers has just issued to its 9,000 members a "Posters-For-Production" booklet containing reproductions of 70 morale-building posters chosen as "truly representative of our war effort." The posters were chosen from approximately 1,000 submitted by 700 companies in the nation and were judged by a committee of three, non-members of the NAM.

Pennsylvania

PUTS ON THE PRESSURE

. . . to Give Your Transformers POSITIVE PROTECTION against short circuits



All helical and pancake coils pre-compressed under pressures greater than short circuit stresses encountered in service.

The ability of the coils to maintain their

compressed under pressures greater than short circuit stresses encountered in service.

The ability of the coils to maintain their shapes under the prescribed pressures definitely guarantees that the transformers will withstand short circuits.

Here are the fundamental principles used by PENNSYLVANIA in building transformers to withstand short circuits.

1 DRYING The coils and all insulation must be dried sufficiently to make sure that no shrinkage will take place when the transformer is in operation or is under a short circuit.

2 PRE-COMPRESSING The dry coils must be pre-compressed to such an extent that no further compression can take place under the most severe short circuit. This definitely precludes any possibility of the coil stack moving or distorting under short circuit.

3 TREATING After drying and pre-compressing, the coils must be treated in such a manner that they are self-supporting and will maintain their pre-compressed and pre-shrunk shapes when mounted on the core.

4 SUPPORTING The final step is to provide sufficiently strong supports at the top and bottom of the group of coils to keep the coils in their pre-compressed shapes.

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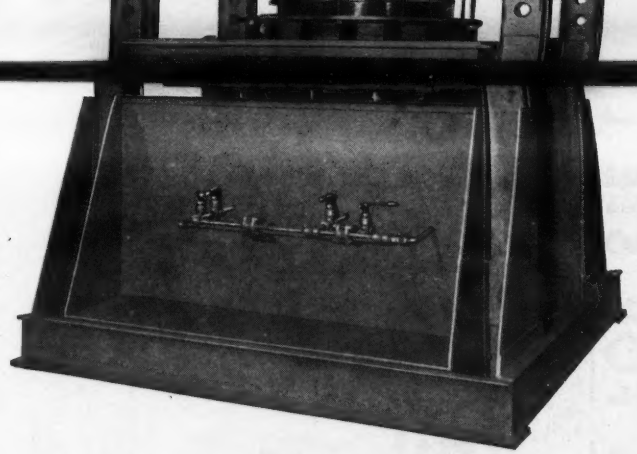

5000 Kva coil under 125,000 lbs. pressure. This hydraulic press capable of applying pressures up to 600,000 lbs.

Pennsylvania TRANSFORMERS

Pennsylvania TRANSFORMER COMPANY

PITTSBURGH, PENNSYLVANIA

"I have to push the North Star away from my door"

THE BOYS who used to work beside us at the machines and desks helped write this advertisement. They are scattered now throughout the world, fighting our fight. But they write us—from overseas and from the camps en route.

"This country is so far north," writes a swell guy who left one of our plants to go with the Army Engineers, "that I have to push the North Star away from my door before I can get out. We get our water from the Big Dipper."

That is typical of their high-hearted good humor. Running through their letters, too, are expressions of satisfaction they experience when they see and use Harvester-built equipment in far-away places. "When I see an International Truck or any other Harvester machine," one boy writes, "it makes me feel good if I can just *pat* it." And another: "Keep the Internationals rolling off the production line, folks. We could kiss them when they arrive down here."

Whoever you are, you have a loved one or a friend fighting your fight on a far-away front. Write him today—write him often—write him *cheerful, encouraging* letters to let him know you are keeping the home front ready for his victorious return. In the truest, fullest sense, your letters will be Victory mail.

INTERNATIONAL HARVESTER

Builders of Ordnance, Automotive and Food Production Equipment for the United Nations

Save to Win
with these four simple rules
of battery care:

1. Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
2. Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
3. Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
4. Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

Exide
CHLORIDE
BATTERIES

. . . is a vital principle of utility operation!

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
Philadelphia
Exide Batteries of Canada, Limited, Toronto

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

(*Professional Directory Concluded on Next Page*)

PROFESSIONAL DIRECTORY
(concluded)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

* Fortnightly advertisers not in this Issue.

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"Hello, you Limey!"

"Very glad to see you," answered the Britisher. . . The date: April 7, 1943. The place: A stretch of wasteland in Southern Tunisia, 42 miles from Gabes. The occasion: The historic meeting between reconnaissance patrols of the British Eighth Army, in three armored dingos, and armored forces of the Second U. S. Army Corps, in five Half-Tracks with 75-millimeter guns. . . . As Half-Tracks built by Autocar are helping to make history, so is their manufacture training the men and women of Autocar to make better Autocar *trucks* for the days to come. You will want those trucks. In the meantime, we urge you to keep your pledge to the Truck Conservation Corps.

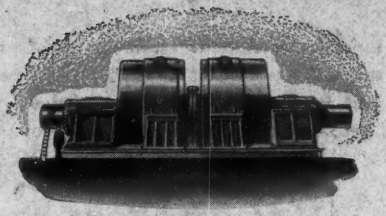
AUTOCAR

MANUFACTURED IN ARDMORE, PA.
SERVICED BY FACTORY BRANCHES FROM COAST TO COAST

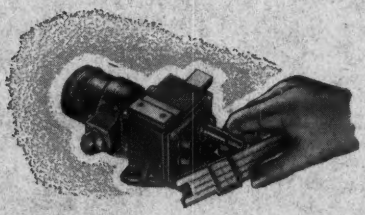
"For excellence of production" for the Army, the Navy, the Marine Corps, and the Air Forces.

Electrical Ideas in Action!

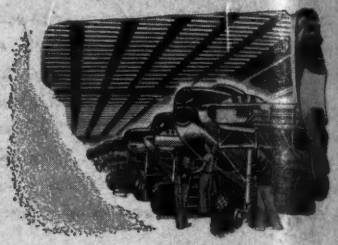
HELPING TO MEET AMERICA'S WARTIME NEEDS



THE WORLD'S MOST POWERFUL MOTOR will soon be in service driving a reversing roughing stand for the fast production of armor plate. Rated 7000 hp, 25/60 rpm, this G-E motor will furnish 4,000,000 pounds torque at a 1-ft radius. It weighs 1,000,000 lb. This big motor has no through shaft, a striking departure in design. Instead, its shaft extensions are bolted onto the motor armatures, and the two armatures are bolted together through large flanges.



BETTER FIGHTING PLANES are resulting from the increased use of complete and self-contained driving mechanisms—called power packages—to operate bomb doors, landing gear, and control and protective devices. Each G-E power package combines whatever elements are needed to do the job—motor, brake, limit switch, gears—integrally designed for light weight, sm size, and fast replacement in case combat damage. Present ratings ran from 1/100 hp to 3 hp.



A 33 PER-CENT SAVING in low-volta distribution copper is often made possi by the new practice of using a plant's 4 volt power circuits to supply energy f general area lighting, making separa 120/240-volt lighting circuits unnecessar An important saving of wiring labor also made. Fluorescent fixtures with Fo lamp ballasts, also modern high-ba vapor lighting equipment, are admirabl suited to these higher-voltage circuits.

ATTENTION—ELECTRICAL ENGINEER Conservation of America's power r sources—and man power—calls for pu ting new electrical ideas to wo throughout industry. ● In finding ne solutions to electrical problems, simp or complex, you can count on the c operation of General Electric. The ide shown here are just a few of ma samples, suggesting the scope of th G-E service. ● Further information, the aid of our engineers, is availabl for any job that can help win the wa ***General Electric Co., Schenectady, N.***

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